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DEFENSE ENVIRONMENTAL RESTORATION PROGRAM TO CLEAN UP FORMER HAZARDOUS WASTE DUMP SITES

HEARING

BEFORE THE

ENVIRONMENTAL RESTORATION PANEL

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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ENVIRONMENTAL RESTORATION PANEL OF THE
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HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
ENVIRONMENTAL RESTORATION PANEL,
Washington, DC, September 26, 1985.

The panel met, pursuant to notice, at 2:08 p.m., in room 2337, Rayburn House Office Building, Hon. Dave McCurdy presiding.

OPENING STATEMENT OF HON. DAVE McCURDY, A REPRESENTATIVE FROM OKLAHOMA, CHAIRMAN, ENVIRONMENTAL RESTORATION PANEL OF THE COMMITTEE ON ARMED SERVICES

Mr. MCCURDY. The panel will come to order.

This afternoon the panel will receive testimony from the Department of Defense, the Environmental Protection Agency, and congressional witnesses, on H.R. 1940 offered by Mr. Fazio.

The panel will also consider the Federal facilities provisions of H.R. 2817, the Superfund reauthorization bill, as reported by the Energy and Commerce Committee.

The creation of an Environmental Restoration Panel by Chairman Aspin underscores two aspects of Department of Defense [DOD] environmental restoration efforts, their importance, and the difficulty in fashioning realistic statutory guidelines. We need to send a clear signal of the Armed Services Committee's strong commitment to the cleanup of hazardous wastesites on DOD installations.

The panel's creation mirrors the committee's full support of DOD's increasing emphasis on environmental restoration, and its willingness to enter into a full partnership with State and local governments in cleanup efforts.

More importantly, however, the panel reflects the committee's intent to become an active and positive player in efforts to streamline DOD procedure for identifying and cleaning up hazardous waste sites.

One of the first things that's become obvious to many of us on the Armed Services Committee is that devising legislative solutions to environmental restoration problems is a complicated business.

For example, subcommittee hearings on the bill offered by Mr. Fazio to clarify the DOD's status in the context of the Superfund legislation revealed that pertinent findings and policy issues ranged across the jurisdiction of at least four different subcommittees. This development prompted Hon. Dan Daniel, chairman of the Readiness Subcommittee, and Hon. Ron Dellums, chairman of

the Military Installations and Facilities Subcommittee, to write to Chairman Aspin suggesting the appointment of a full committee panel to consider H.R. 1940.

The difficulty in dealing with environmental restoration issues became even more apparent when the Energy and Commerce Committee reported out H.R. 2817, the Superfund Reauthorization Program.

In addition to the issues raised by Mr. Fazio, the panel is now faced with major provisions dealing with all Federal facilities, including the Department of Defense. Although Federal facilities provisions contained in H.R. 2817 were not addressed in the panel's original charter, they are clearly within the jurisdiction of the committee. Therefore, I believe that the panel has an obligation to carefully address those provisions and recommend appropriate action to the full Armed Services Committee.

I would anticipate that the panel would draft an amendment to H.R. 2817 that will incorporate its recommendations on H.R. 1940, and the Federal facilities provisions of H.R. 2817, and seek the full committee's concurrence and support.

In adopting this approach the panel fully recognizes it is taking on a tough job. The issues are difficult, and the time is short, but the House is likely to take up the Superfund reauthorization bill within the next couple of weeks.

That is why the hearing this afternoon is so critical to the panel in developing these recommendations.

Before the members are three drafts of legislative language relating to H.R. 1940 and H.R. 2817. The first is a copy of the staff draft of an amendment incorporating the provisions of Mr. Fazio's bill. The issues of most concern to the panel in this draft deal with the creation of a separate research and development and demonstration program, and the establishment of a transfer account to fund DOD environmental restoration efforts.

The next two drafts represent alternative approaches to the questions of State participation in DOD hazardous waste cleanup actions. The first incorporates suggestions for a compromise from the National Governors Association.

The second is an informal EPA redraft that seeks to address administration concerns.

I want to emphasize that neither of these alternatives represents the formal views of the National Governors Association, EPA, or the panel. They've been drafted to illustrate the major differences over the nature and scope of State participation and help the panel to focus on these issues.

The questions that have most interested the panel relate to Federal and State permits, judicial review prior to the initiation of a response action, the validity of the national contingency plan as a criteria for evaluating State standards, and the method for resolution of disputes between DOD, EPA, and State authorities over response actions.

In addition, the panel would like the witnesses to address the requirement for national security waivers relative to the community right to know provisions of H.R. 2817, and the funding and administrative impact of citizen suits upon the DOD Environmental Restoration Program.

That's a tall order, and I'd like to begin by recognizing the first witness, Mr. Carl Schafer, Director, Environmental Policy in the Office of the Secretary of Defense, and Mr. Paul Dube, Director for Operations, Office for the Assistant Secretary of Defense of the Comptroller.

Carl, I understand that you have spent more time on the Hill than in your office over the past several weeks. Judging from what has happened in the Senate this week, it appears to have been time well spent. We appreciate your willingness to work with the committee and the panel this year on the thorny questions related to environmental restoration, and look forward to your testimony.

Mr. Schafer, you may begin.

STATEMENT OF CARL J. SCHAFER, DIRECTOR FOR ENVIRONMENTAL POLICY, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE [ACQUISITION AND LOGISTICS], ACCOMPANIED BY PAUL DUBE, DIRECTOR FOR OPERATIONS, OFFICE FOR THE ASSISTANT SECRETARY OF DEFENSE OF THE COMPTROLLER

Mr. SCHAFER. Thank you, Mr. Chairman, and good afternoon to you, sir, and to your fellow panel members, and to the members of the staff.

The written statement that I have prepared is tendered for inclusion in the record. I would like to make very brief remarks. And then I'm prepared to answer your questions. If that's agreeable, I'll proceed.

Mr. MCCURDY. Very good.

Mr. SCHAFER. I believe that the time that I've spent on the Hill in the past couple of weeks was well spent simply because I have a credible story to tell. It's without philosophical slant. It's strictly practical. I'm an engineer.

The Department of Defense is, in fact, taking its responsibilities for cleanup of hazardous waste dumpsites very seriously. We are working hard, and we are making progress, and we are doing that in partnership with EPA, the States, and citizens groups.

I will not represent to you that we are perfect. We are human, but we are making steady progress.

The memorandum of understanding with EPA has been particularly useful, helping us to establish as it does administrative and procedural ways and means of getting on with the job of cleaning up.

This cleanup program from an engineer's point of view, and from an environmentalist point of view, given that I spent the past 14 years working for the Environmental Protection Agency myself, in various programs, is really quite different from past environmental programs. In this situation the state of the art of science and technology is simply not so well advanced as to be able to tell us with great precision what to do. It does not lend itself to a regulatory approach. It is almost the kind of program that you could characterize as research.

The issues are how clean is clean, and how and where shall we put it once we've dug it up. And the bottom line is what is it all going to cost?

There's a great deal of opportunity then in a technical area of such emotional urgency, and scientific uncertainty, for simple differences of opinion over matters of technical judgment over what should be done, or how fast it should be done to have the unintended effect of stopping anything from getting done.

It's in that very practical mode that I regret the apparent necessity to throw these things into a litigious relationship. I believe that we're all in this together, and we've got to work together to get out of it.

My concerns, therefore, for the arbitrary imposition of State permits standards, or, for that matter, with respect to provisions for a citizen's right to sue in these very emotional and scientifically underdeveloped subject areas, are quite practical. Again, the subjects are how clean is clean, and where shall we put it? Perhaps someone else's State. They're relatively uninformative when I ask them what I'm supposed to do when I get to that other State with my load of trash.

I do agree, and I wholeheartedly endorse, the need for State, local, and citizen involvement in the investigative and decision-making process leading to the remedial action program design and execution.

There's got to be a way, however, to set up the right to participate to identify areas of dispute, and dispute resolution mechanism without simply throwing this into a situation where one or another party has arbitrary authority, or one or another party simply stops the whole business.

I believe, in view of the progress that we have made our proactive approach to the whole subject, and our willingness to involve ourselves and the communities around us in this program, that DOD's authority, to manage and direct our own program, with appropriate involvement and oversight by the affected other entities, should be maintained.

Last, but really most important, I'd like to speak briefly to the subject of national security protections.

I do believe that given the extensive provisions for a citizen's right to know, and access to information, contained in this bill, H.R. 2817, and given also the nature of our business in the Department of Defense, there is a legitimate need for a defense of the national security interests. The citizen's right to know provisions apply not simply to hazardous waste, but also to hazardous substances. Frankly, this is our stock in trade.

And exactly what we use, how much of it we store, and where it's stored, in detailed exposition is classified in many cases, in most cases.

We have made it a practice to mandate access to our installations, and activities, even though it's classified, for State and Federal environmental officials with appropriate security clearances. They have an obvious need to know in these environmental areas.

And I don't really believe that the charge that we would hide our environmental problems under the cloak of classified information, the national security interest, are at all well founded.

It's in that context then that I strongly believe that the bill should be conditioned simply to protect the national security

against unwarranted release of classified information, or unwarranted interference with defense programs.

These conclude my opening remarks, sir. I am prepared to answer your questions.

[The statement of Mr. Schafer follows:]

PREPARED STATEMENT OF CARL J. SCHAFER, JR.

Good morning, Mr. Chairman and members of the Committee. It's a pleasure to appear before you today. I would like to give you a brief status report on our Defense Environmental Restoration Program to clean up former hazardous waste dump sites, and comment on H.R. 1940 in particular, and also on H.R. 2817.

As you know the Department of Defense is actually a rather small part of the Nation's hazardous waste problem. With respect to hazardous waste currently being generated in the Nation, the Department of Defense at its 900 major installations generates only two-tenths of one percent of the national total of all generations of hazardous waste. With respect to the cleanup program for former hazardous waste dump sites, the Department of Defense now has 42 such sites proposed for listing on the National Priorities List of 800 sites which have been identified for immediate cleanup. Because we have begun to study this problem earlier than most, we were able to identify and provide data to EPA for ranking of our worst problems immediately, therefore we expect few more Department of Defense sites to be added to the list. The total list is expected to reach 1800 sites, therefore our proportion on the list should continually fall. With respect to sites not on the National Priorities list we project possibly 500 to 600 DoD sites that will require some degree of cleanup when we have completed our investigations. Again, this is a small part of the national problem wherein as many as 18,000 sites requiring some action have been projected.

We have now completed 369 preliminary assessments at the 473 installations identified as possible hazardous waste dump site locations and we will have completed preliminary assessments at all 473 installations by the end of Fiscal 1986. We have completed RI/FS studies at 42 installations and have RI/FS programs in progress at 144 installations including at all of the installations or sites proposed for listing on the National Priorities List. We have completed response actions at 128 sites.

Let me now turn my attention to H.R. 1940. We have been working with your staff and they have been very responsive to our concerns. But one in particular I would like to point out for the record.

I am most urgently concerned about provisions of H.R. 2817 that provide for extensive access to information and installations without regard for protection of legitimate national security interests. These provisions relate to hazardous substances as well as hazardous waste. The mission of the Department of Defense is such that the location, composition and amount of hazardous materials being stored is classified information. In addition, there are production and operational facilities of both the Departments of Defense and Energy that must be protected from unwarranted interference, especially shutdown. I believe that suitable language applicable to any provision of CERCLA should be included to protect national security interests. Suggested language is:

National security.—(1) The President may issue such orders regarding response action at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title with respect to the site for facility concerned.

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this Act.

I am also especially concerned that response authority vested in the President and rescinded under Section 3(A) should continue to be allowed to be delegated to the Department of Defense and other Federal Agencies. Similar language rescinding our authority exists in Section 101(B)(2) of H.R. 2817. I feel that the withdrawal of such authority and responsibility to carry out a program to investigate and remedy hazardous waste dump sites on federal facilities would seriously constrain our ability to respond to the public urgency for quick and cost-effective cleanup. It also would put federal agencies of Cabinet rank in the position of being required to

budget for and carry out such activities without recourse to the normal procedures in which national priorities including those of national security are set. With that exception then, I find nothing in the balance of H.R. 1940 as it has evolved in discussions with your staff to which I would take exception. Indeed I might comment that there are several provisions that will be helpful.

In particular the provisions allowing a program of research and development designed only to address contaminants of specific interest to the Department of Defense will be useful. We are very actively pursuing efforts to identify new cost-effective technologies for cleanup at our sites and to cooperate with the Environmental Protection Agency's Research and Development Office to make our sites available to them for research and development programs of mutual interest. I call your attention to the attached cooperative joint research program description recently completed. We are also actively pursuing several efforts designed to reduce our production of hazardous waste.

In addition, I would like to comment briefly on the provisions for the Agency of Toxic Substances and Disease Registry (ATSDR) to prepare toxicological profiles for 25 substances of particular interest to the Department of Defense as being a potentially useful one. We have already identified those 25 substances and are prepared to move forward on that program. These two provisions, taken together, allow us to pursue areas of special relevance to DoD needs but which may not be in the forefront of interests to the national program because of our unique operations and small impact on the national program.

I would also like to comment on the situation in which we find ourselves with respect to the national cleanup program. This Superfund environmental program differs significantly from past environmental programs. The state-of-the-art, both scientifically and technologically, is not as well advanced for hazardous waste cleanup as it was in the past for water pollution or air pollution control. We are all faced with the question of "How clean is clean?", and the issue of "Where shall I put it?", which is also the issue of future liability. We all agree that a permanent remedy at any given site is more desirable than a temporary one. To that end we are pressing forward in the search for ways to detoxify or destroy the materials found in these hazardous waste dump sites. And yet the public urgency and concern demands fast response. The danger as has been pointed out in a recent study by the Office of Technology Assessment is that we will move too fast. The urgency to respond on the one hand and the uncertainty of the science and technology on the other hand and the uncertainty of the science and technology on the other hand produce frustration in us all.

It is in the context of that frustration then that I would speak to you about the impact potential for citizen suits on our efforts to cleanup these dump sites. My concern is, in a program where science has not had time to develop the necessary standards and our decisions in the cleanup process must necessarily therefore contain a large element of judgment, that simple differences of opinion over what must be done or how fast it should be done could have the unintended effect of stopping anything from being done. I do agree that citizens have a legitimate interest in the problem, especially when they live near one of these sites being worked on. Their views should be sought and they should be fully informed of the process. My concerns here are only practical, not philosophical.

In the same manner I feel permanent procedures which have been so effective in the air and water pollution control programs would not be effective in this program area. Permits are basically a device in which to set a timetable for the installation of technology that has been identified as capable of meeting certain performance standards, and to enforce those schedules and performances. It is the lack of those scientific and technological determinations that bring me to the conclusion that permit procedures are inappropriate to the hazardous waste cleanup program.

For similar reasons I believe that the requirement to meet State standards must be tempered by an approach that allows a negotiating process. The absence of scientific bases and the high emotional urgency of the public need, can be expected to produce varying requirements from one state to another. Indeed our experience with the cleanup standards required for one contaminant in particular varied from four and one-half parts per billion to two hundred parts per million between two states. The difference in the cost of cleanup can be staggering. State participation in the remedial action selection process should be required by their arbitrary authority to impose local requirements could result in excessive additional cost of cleanup without any significant benefit protective of human health and environment and also contain the potential to simply stop cleanup while the matter is adjudicated.

These conclude my prepared remarks. Let me summarize briefly by saying that I believe that the Department of Defense and other federal agencies are taking a re-

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[illegible] approach to cleaning up former hazardous waste dump [illegible] require that we be allowed to continue our programs in partner[illegible] Environmental Protection Agency, the state, local governments, and [illegible] requirements that simply add bureaucratic process and provide op[illegible] efforts or agencies to simply stop the program, should be avoided.

[illegible] to answer your question.

[illegible] Thank you, Mr. Schaefer. Mr. Dube, you don't [illegible] The staff has informed me.

[illegible] OK. If you're available for questions to support [illegible]

[illegible] Thank you, Mr. Schaefer. I appreciate again, your will[illegible] with us in trying to resolve some of these ques[illegible] probably didn't have much choice, considering [illegible] on the Superfund reauthorization bill, and it was [illegible] think, was to many people, the train was leaving [illegible] it was time to get involved.

[illegible] and, though, as one who has three military facilities [illegible] the importance of the defense effort in that there [illegible] sonable balance struck. On the one hand they are [illegible] est employers in the State of Oklahoma. At the [illegible] don't want them polluting our water, or the environ[illegible]. There has to be reasonable standards and balance [illegible] s probably where most members are coming from.

[illegible] tion when Mr. Kramer was here, he's from Colora[illegible] from Georgia, that most of us on this panel are of [illegible] one of our earlier meetings it became very clear [illegible] of this panel is that we expect, and will require, [illegible] Government, and its agencies, will be treated the [illegible] vate sector, same standards, no better, no worse. [illegible] guiding principle, that we don't believe that—and [illegible] can speak for himself, but that they should be re[illegible] a higher standard of requirement, or that they [illegible] the old rules of the game, be unaccountable to the [illegible] its citizens.

[illegible] bit of philosophy from the Chair, I have some ques[illegible] the first question I raised when I was looking over the [illegible] stuff was very clearly, was that of the blanket na[illegible] waiver. And, I think I can speak for the panel in [illegible] not be a blanket waiver by the Department of De[illegible] President, or for national security purposes.

[illegible] as it is of some others, that we have a tendency to [illegible] things unnecessarily. That we have a tendency to [illegible] classified briefings at the drop of a hat, and we're [illegible] to allow the President, or Secretary, or anyone else, to [illegible] waiver.

[illegible] think it's clear that there are exceptions, that there [illegible] require some type of classification, and the need [illegible] of national security outweighs the citizen's right to [illegible] instance. But that is going to be on a case-by-case [illegible] that's how we are trying to structure the legislation.

[illegible] given you an answer, but I wanted to make it per[illegible] where this panel stands, and because we've discussed [illegible] detail.

Can you provide the panel with some specific examples that demonstrate why you believe the Department should have a waiver for national security purposes? And also what assurances can you give that this authority would not be used to deny information about environmental restoration efforts that the public is entitled to?

And beyond that, how many installations do you think this would cover?

Mr. SCHAFER. With respect to the Department of Defense, in my mind, because the citizen's right to know goes to the subject of hazardous substances, not just waste, and given the there's a degree of uncertainty as to just what that might encompass within our inventory, in the broadest sense of the word, I can give you a couple of thoughts that lead me to the conclusion that some protection is necessary.

One of them is that it is our policy to neither admit nor deny the presence of nuclear devices in any given place to the extent that such devices might be considered hazardous substances. Within the context of this clean up law, that should be protected.

Mr. MCCURDY. May I interrupt you there?

Mr. SCHAFER. But, of course.

Mr. MCCURDY. Could you explain that? I 's one question whether you take a facility that's involved in the manufacture or assembly of nuclear devices that might have potential discharge, as opposed to the storage of a weapon or weapons system.

Are you specifically addressing the manufacture, processing, or some area that might have some potential discharges? Does the law require that just because you have some hazardous chemical on the installation that you automatically will be informed of that presence, or that potential for discharge?

Mr. SCHAFER. I believe that the thrust of the legislation as it is proposed is that the storage is at issue, that the incident at Bhopal gives rise to a great deal of anxiety about what's being processed, or what's being stored, and what the conditions of it are. And my impression is that the language is designed to cover simply the storage, as well, of course, as the manufacture.

Which brings me to my second point. And that is that the idea that we want this does not necessarily mean that we would use it willy-nilly. Indeed, we have the waiver authorities and exemptions in existing environmental law. Notably the Clean Water Act. They've never been used. But times change.

The need for these protections then should be viewed in the current context, as well as the precedent that's been set.

Environmental activists are interested in the significantly broader aspect of environmental issues than we may be addressing on the subject of clean up under the Superfund Act. They have recently, for instance, identified an agenda that specifically is designed to halt the production of certain nuclear materials by any legal device available to them.

Those statements are reported by those organizations, and those statements have been picked up by the national press. And so this current environmental agenda gives rise to our concern with respect to our production facilities.

Mr. McCURDY. I understand that. No one here is saying that they should have the ability under this act to disrupt the functioning of the Department of Defense for whatever reason.

The question I have is in what instances can you provide to this panel that the—even eliminating the storage issue, let's take weapons out of the criteria. Just assuming that there's not a provision requiring to report the contents of each one of those projectiles, or whatever.

But what if you're having a storage of chemicals that are not in a contained manner, or that's not in a weapon system per se, or that you have a process, a manufacturing process. I can give you an example we used, Linear Alkyl Benzene. They are solvents, and part of the problem is in the past has been the use of solvents in cleaning engine parts and they would discharge those in a manner which today are not considered appropriate for environmental reasons.

Do you perceive any reason that any of those materials should be waived for the purpose of national security?

Mr. SCHAFER. Absolutely not. The thrust of my thought is simply to distinguish between the necessary cleanup job under Superfund that should be done right out in the open and the need to protect valid national security interests.

There are processes and waste streams from classified operations the nature of which, if disclosed, could lead to very accurate inferences as to what that process was, and what that product is. Those should be the exceptions. This program here is a public mandate. I'm not trying to ask anything unreasonable. I don't think our point of view is unreasonable.

Mr. MCCURDY. Well, again, just trying to get you on the record as to the details of some of those so we can address these concerns as they may arise. Having been in EPA, and now in charge of the effort at DOD, are there certain schedules of chemicals that are broad schedules that could be used to allow the public to know what is being manufactured or stored at the facility in question. I have to go back to some of my past experience in working with the medical profession, schedule drugs, or something, but are there scheduled types of chemicals that fit within certain categories of relative toxicity, or whatever, that might be identified without again revealing the intricate processes by which the Federal Government may be operating?

Mr. SCHAFER. Yes, there are. I can't represent myself to be an expert on the subject, but what I'm told is that, for instance, with respect to certain types of chemical agents that where they're being stored, the types of materials being stored, and the medical responses to them, are given to local government and medical communities, and that the really classified nature of it are only the precise details of what it is, and the specific amount of how much is there, that sort of thing.

But insofar as we can be legitimately open, we are now being, and I think that we can satisfy your concerns.

Mr. MCCURDY. Can you provide for the record those other categories within the law that you have now where there are specific general waivers based on Department of Defense, or the national security in that?

Also for the record, if there have been any instances where you've initiated or used that waiver? I think it's important to have that.

Mr. SCHAFER. I will supply for the record, but just for the moment I am not aware of any instances where the waiver authority has been used. This does not mean that we should set ourselves up for trying to lock the barn door after the horse is stolen.

[The following information was received for the record:]

The various waiver provisions contained in the environmental laws are as follows:

1. Section 118(b) of the Clean Air Act allows the President to exempt any emission source of the Department, except new stationary sources, if he determines it to be in the paramount interest of the United States to do so. Such waiver can be for one year only and then the President must review his decision. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance any weaponry, equipment, aircraft, vehicles, or other classes or categories of property owned by the Department which are uniquely military in nature.

2. Section 18 of the Federal Insecticide, Fungicide and Rodenticide Act allows the Administrator of EPA, in consultation with the Secretary of Agriculture and the Governor of any state concerned, to excempt any Federal or State agency from any provision of the Act if he determines that emergency conditions exist which require exemption.

3. Section 313(a) of the Clean Water Act authorizes the President to exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any provisions of the Act if he determines it to be in the paramount interest of the United States to do so; except that no exemptions may be granted from the requirements to meet national standards of performance or toxic and pretreatment effluent standards. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interst of the United States to do so, issue regulations exempting from compliance any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property which are owned by the Armed Forces of the United States and which are uniquely military in nature.

4. Section 4(b)(2) of the Noise Control Act provides the President the ability to exempt any single activity or facility, including noice emission sources or classes thereof, of any department, agency or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption other than for military weapons or equipment which are designed for combat use may be granted from the requirements for noise emission standards for products distributed in commerce, railroad noise emission stadards and motor carrier noise emission standards.

5. Subtitle F, Section 6001 of the Resource Conservation and Recovery Act authorizes the President to exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination.

6. Section 22 of the Toxic Substances Control Act requires the Administrator to waive compliance with any provision of this Act upon a request and determination by the President that the requested waiver is necessary in the interest of national defense.

Presidential waiver authority for environmental requirements has been used just once, to the best of our knowledge. That was in 1980 when the President waived provisions of the Clean Water Act and The Clean Air Act to allow the U.S. Navy to construct an emergency housing facility at Fort Allen, Puerto Rico for Cuban and Haitian refugees.

Mr. MCCURDY. Well, that's not my point.

Mr. SCHAFER. I understand.

Mr. MCCURDY. But this experience is important when you're dealing with this area. I think that's something we should look at.

I understand there's a Department of Energy representative here, Mr. Mellor, or one of the other agencies that will comment on this.

STATEMENT OF WILLIAM MELLOR, DEPUTY GENERAL COUNSEL FOR LEGISLATION AND REGULATION, DEPARTMENT OF ENERGY

Mr. MELLOR. Mr. Chairman, my name is William Mellor. I'm Deputy General Counsel for Legislation and Regulation of the Department of Energy. I have other representatives here with me as well who would be happy to answer any questions you might have during the course of the hearing.

If I may briefly just amplify on what Mr. Schafer has said.

We share very much the concerns that he has expressed with respect to H.R. 2817. The State-permitting issue is one we feel has very real potential for bringing, in essence, a gridlock into the cleanup process.

Now, this cleanup process at the Department of Energy is one that has recently undergone a change, and a change that I think people would all agree is a positive one.

When Secretary Herrington was confirmed back in the wihter, he came on board very aware of the fact that there needed to be a good hard look given at the environmental program at the Department of Energy.

The commission to study by Dr. King, who came back with an extensive report on the nature of environmental compliance at various DOE facilities.

The result of that report was that last week it was announced that a new Assistant Secretary in a new slot called, "For Environmental Safety and Health," has been designated, not yet confirmed, hopefully confirmed by the Senate in the near future, and charged with the mission that is to affirmatively and aggressively implement environmental compliance into programmatic activities of the Department of Energy.

Now, in light of that, our concern at this point is that we are anxious and very committed to getting on with these facilities.

The State permitting, as I said before, is one we view with concern because of its potential to set a precedent for "anywhere but in my backyard," the kinds of permitting, and various requirements.

The citizens' supervision as well, particularly when coupled with State requirements or local government requirements, runs the risk of having ad hoc court imposed prioritization of a nationwide program.

And, finally, with respect to national security, an example, if I may be general in the nature of it, was revealed in the last year at a DOE facility, where at a surplus site there was uncovered vast weapons grade material, the shape of which is highly classified. It's not a simple chemical solvent. It is the nature of the exact site with weapons grade material in it, the shape of which is significant, crucial classified information. All we are saying is that in the event there is such information available or disclosed in the compliance with cleanup activity, it does run a very real threat of compromising legitimate national security.

Now, we do not want, nor would we ever seek, a blanket waiver from compliance of all environmental laws. We would strongly agree with the chairman and members of the committee, that it is one that only be exercised, if ever, in a very careful factual situation-by-situation basis.

Mr. MCCURDY. Very good. Thank you.

Before I return to Mr. Kramer I wanted to follow up with Mr. Schafer, and Mr. Mellor alluded to it also, and that is State permits for DOD onsite response actions, and the problems that you foresee.

I understand the other body in passing their bill had no provision whatsoever for State permits. The House bill that was reported from the Commerce Committee does have it. Please explain in a little more detail what DOD's opposition to those permits is, and why you're also opposed to permits under the Clean Water Act, and Clean Air Act, that are currently in effect for Federal facilities.

Mr. SCHAFER. Thank you, sir.

With respect to the existing permits, we are not, in fact, opposed to those under the Clean Air Act, Clean Water Act, and such. Indeed, we have active programs in air pollution control and water pollution control.

Just as a matter of interest, our total environmental budget annually is in the range of $1 billion, approximately two-thirds of which is devoted to hazardous waste subjects, but the balance of which is devoted to air and water pollution control.

Mr. MCCURDY. Would you restate that amount, please?

Mr. SCHAFER. $1 billion.

With respect to the subject of permits for onsite cleanups, whether they be State, Federal, or local, the subject at issue here, I believe, is that given the degree of scientific uncertainty, I don't know what cleanup standards are going to be. We can study a site until we're satisfied that we know what to do about it, proceed then to the remedial action, and run into something in the course of fixing the site, that we simply had not anticipated beyond our wildest imaginings.

Permits have the nature of being a regulatory device to require compliance over a period of time with the installation of certain well understood technologies that have been studied, and can be expected, given the nature of your waste stream, to produce certain performance type results with respect to the amount finally emitted.

That's not at all what's going on here. All I'm saying is then that permits as a device are not well suited to this particular program's needs.

Second, under the national contingency plan written by EPA the process for approaching these investigations for involving everyone in the decisionmaking process, and getting on then with the cleanup, are well described and laid out, and the judgments and types of criteria are also described in that national contingency plan. And that's the approach that we, and for that matter everyone else, use in doing this program.

In fact, the requirements for investigations, community relations, all of that sort of thing, under the national contingency plan, in

fact, obviate the need for a permit per se. It's a program approach to this thing that's designed to handle the particular problem that we're dealing with. Permits were designed to handle a different type of problem.

And that's my point there, is simply that I believe they lend themselves to delay in getting on with the actual job of cleanup. They become an end unto themselves. They duplicate existing requirements under the national contingency plan, and ultimately they will simply increase the cost of getting this job done.

Mr. McCURDY. Does the Federal Government have standards currently that are uniform in the areas of chemical waste that you operate under at the Department of Defense?

Mr. SCHAFER. If I understand the question correctly, I think so. With respect to the waterborne, and airborne emissions from the chemical plants, and what not, yes, indeed, we have permits there, and we meet the EPA and State requirements, all of that.

Mr. McCURDY. What about toxic chemicals, or substances in the ground, just general discharge? Are there some type of standards? And, again, you're here to help educate us also from the standpoint of the cleanup. Are there certain methods or criteria that are used that are uniform that the Federal Government has established?

Mr. SCHAFER. I don't think there are such uniform standards with respect to these cleanups. The subject of how clean is clean, if that's what we're talking about, and we in DOD don't have any either. We depend upon EPA and the States, and we're also setting up our own scientific program to develop these types of numbers.

But, our experience is that there are as many different standards on any given subject as there are States you inquire of.

Mr. McCURDY. My follow-on question is that if there is no Federal standard, what is your experience with the States? Is there a wide range of them that do not have standards, or some that do very stringent standards? What is the range of possibility that you're dealing with?

The State of Colorado, which is probably the leader now as far as dealing with the Federal Government, as to problems with toxic substances. Is their standard far different from Oklahoma, or California, or South Carolina?

Mr. SCHAFER. I can't speak with great specificity but I think that one of the solvents, for instance, that we use a great deal of, trichlorethelene, our experience is that in a survey of the standards required by 18 different States, we found that the values required range all the way from 4½ parts per billion, to 200 parts per million.

And the difference in possible cleanup costs there is, of course, significant.

I don't want to come down as if I'm anti-State. That is not my point. My point is rather we do depend on the States to generate these figures, and we do want to make the States happy. Keep in mind that the Department of Defense especially is sensitive to local relationships. These are our neighbors. This is where we live, and where we work too.

So it's a practical concern.

Mr. McCURDY. Mr. Kramer.

Mr. KRAMER. Thank you.

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I was out of the room, so I will hopefully not be too terribly redundant.

I did have a chance to glance at the proposed security waiver, and I think the argument has been made that there are some instances where perhaps it may be inappropriate for disclosure of the type that you're concerned about to be publicized.

But I believe the way your proposed language is drafted is awfully broad in scope, and it seems to me that it's incumbent on you, if you want this committee to take favorable action on the kind of request that you're making, to at least perhaps suggest to us language that would be considerably more tightly drawn than that which I think you would have in your testimony.

So perhaps you could work on that and get back to us with specific reasons included—if we need a classified copy, that's fine—as to what the more nearly drawn language would be, addressing specifically.

I think you're going to have a hard time given the mood prevailing on a vote in the House of Representatives, anyway, on the floor, with just allowing some service secretary absolute carte blanche in deciding what kinds of activities would not be disclosed.

Mr. MCCURDY. Would the gentleman yield? And I would just inform the gentleman that since that last meeting where we instructed staff to review that language, the way it is written, and the proposal that we have, is that it would be site specific. In other words, there could not be a blanket waiver. It would have to be as to an individual location, which would be a much tighter.

And based on that, if you would like to ask Mr. Schafer his opinion as to whether or not that is too specific, not specific enough, or what, that might be helpful.

Mr. KRAMER. I think that would be helpful to have a geographically limited waiver as opposed to a broad based nongeographically specific waiver. But, in addition to that, it seems to me that certain Government criteria ought to be utilized, other than just simply the broad blanket phrase "national security"—do you want to respond to either one of those?

Mr. SCHAFER. I really feel very comfortable in responding with warmth and enthusiasm to your proposal. Our point of view is really very pragmatic and very straightforward. We would like very much to work with you to redraw that language then. I believe that our interest and yours are exactly the same. This is not an area where we have any particular hidden agendas.

Mr. KRAMER. I also can appreciate your concern about the question being held on various standards that are so different in their requirements, and their implications for cost and techniques to be utilized, and so forth.

Isn't there some discussion taking place that if there is a disagreement between a State and, in this instance, the Department of Defense with respect to how good is good, that the Federal Government would be responsible for that share of the cost that they believe is attributable to their own standard, and if there's going to be a cleanup beyond that Federal requirement up to the level of the state if it's more stringent, then the state will pay for that increment, but will have a right to then come back against the Fed-

eral Government if it can demonstrate that the public safety really required the tighter standard?

Mr. SCHAFER. Yes, sir, there has been language of that sort discussed. There are several different approaches to it as well.

Mr. KRAMER. Is that presently in the bill that's come out of the Commerce Committee?

Mr. SCHAFER. No, sir. In the bill as it stands, the dispute resolution process is not afforded to Federal facilities. In fact, we are required to obtain State permits and to meet State standards, local standards, and other requirements, where, indeed, EPA and their conduct under the Superfund, and private industry, and their response actions themselves, are not required to meet those requirements.

Mr. KRAMER. Why would not private industry be required by the State to reach the same level of cleanup?

Mr. SCHAFER. Let me try to unravel this issue.

One of the subjects is State permits. Permits have a certain degree of arbitrary authority, and bureaucratic processes involved. I talked about some of that.

And the point is then that for onsite cleanups the process under the national contingency plan is a substantial substitute for the process of obtaining a permit.

And so in that sense then the permit itself is procedurally redundant.

Second, under the national contingency plan to which we are bound by law and by commitment, the decisionmaking principles, and the criteria, are set forth. The subject of whether or not any particular standard is consistent with the national contingency plan is what's going on.

Many laws were drawn at one time or another for one or another purpose. We tend to make regulations to fix a problem and then years later wonder why we made that regulation.

To the extent then that regulations for whatever reason may not be relevant to the current situation, the national contingency plan allows for an exercise of judgment, for the identification of dispute, and for the resolution of that dispute as provided by in H.R. 2817 currently. We simply think that we should be also allowed that freedom and flexibility.

The idea that we alone should be bound willy-nilly to meet the State standards, whatever they are, that we alone should be required to obtain State permits for onsite cleanup, we feel it's unnecessary to a successful cleanup program.

Mr. KRAMER. I guess I'm sort of confused. What you're saying is the way the bill under present law, or the way the bill is presently structured, in effect, requires—it allows a dispute resolution between the private sector and EPA with respect to the required standard to be met, but does not allow any dispute resolution between the Federal Government where there are federally owned facilities in the State?

Mr. SCHAFER. That's right, sir.

Mr. KRAMER. That is the way it is presently drawn?

Mr. SCHAFER. That's the current construction under H.R. 2817.

Mr. KRAMER. And what is rationale for that?

Mr. SCHAFER. I'm sure I don't know. I suspect that they feel that for our past sins we must be held accountable to a higher standard, whatever.

Mr. KRAMER. And that is true of all federally owned facilities regardless of whether they're defense-owned or energy-owned, or whatever? Is that true?

Mr. SCHAFER. That is correct.

Mr. KRAMER. In other words, there isn't a different standard being applied to national defense-related Government facilities, and there are nonnational defense-related Government facilities?

Mr. SCHAFER. I don't know. They are not differentiated. It's just Federal facilities.

Mr. KRAMER. Do you have a suggestion as to what would make sense in the way of dispute resolution? I would have a difficult time, quite frankly, just simply saying meet the Federal standard without allowing any say-so from the State permitting process.

Mr. MCCURDY. Will the gentleman yield on this? And, again, because Mr. Schafer is here to comment on some of these, the provisions that's before us that we have considered, and the staff has drafted, provide for this resolution. The language that you earlier alluded to, and that is for the difference betweeen the State standard, or permit requirement, and what the Federal standard is, that the State would be required to bear that cost up front, and then would have some type of remedial relief.

That's the language that we're currently operating from, that will be our proposed amendment to H.R. 2817.

So, the issue is what is the DOD's position as to the kind of position that we have taken?

Mr. SCHAFER. With respect to permits as a procedural device, we don't think they should be required for onsite cleanups of facilities, the EPA, private industry, or anyone else, operating under the Superfund program.

I see them from a practical point of view as simply being duplicative and leading to unnecessary contentious relationships.

With respect to standards, candidly I believe that with regard to cleanup standards, you will find that far more often than not, and I would go so far as to even estimate 90 to 95 percent of the events, we're going to meet the local or the State standard. We're not there to make those people mad. The only time we're going to have a problem with the standard is when under this emotional urgency it simply costs a great deal more money without providing any additional increment of health or environmental protection.

The national contingency plan allows for that type of decisionmaking, and provisions of H.R. 2817 allow for a dispute resolution process.

We would be more than happy to work on a similar device to apply to us. We don't want to say State standards don't apply to us. That is not our point.

Mr. MCCURDY. That's a good answer. Thank you.

Mr. SCHAFER. If I might be allowed, sir?

Mr. MCCURDY. Yes.

Mr. SCHAFER. The type of language that we need to work on is probably going to pivot around one key issue, and I would hope that we would be able to find some compromise by which we could

go forward. But the nature of that key issue is the degree of arbitrary authority the State has, or the cleanup agency has, and if not the degree of arbitrary authority that they have, then who has the burden of proof, or where the presumption stands.

In addition to standards relating to how clean is clean, we also have some recent experience, at least in development, with the issue of where are we supposed to put it. I called it, "not in my backyard," or "waste wars."

The Nation as a whole has not addressed the issue of waste dump siting any more than we've successfully dealt so far with the issue of low level rad waste site developments.

It's this kind of issue that makes this a very tender subject. We're not trying to trample on States' rights. As a matter of fact, it is not an issue of States' rights versus federalism. This is a technical issue, is all it is, and we've got to find a way to work together. We must.

Mr. MCCURDY. Thank you. Mr. Ray.

Mr. RAY. Thank you, Mr. Chairman, Mr. Schafer. We're glad to have you here today, and looking forward to hearing all of your testimony and questions.

Let me back up a minute and ask you according to your testimony of which I've just had a chance to read, DOD has 911 major installations in the United States.

Mr. SCHAFER. Yes, sir, that's correct.

Mr. RAY. And you presently have identified some, and are doing preliminary assessments on working toward all bases getting on a register at some point in time so that we know the status of where each one stands, and in what category.

Mr. SCHAFER. That's right, sir.

Mr. RAY. The question I have is what are we doing at these bases right now? Have we now stopped putting hazardous toxic waste into these areas, and are we moving into some sort of a plan with the base commanders that are taking precautions at the present time?

Mr. SCHAFER. Absolutely. We certainly are.

Let me try to summarize for you. The Defense Logistics Agency was assigned a mission in 1980 of being our central manager for the disposal of current generation hazardous waste. They are very actively and aggressively pursuing that program. And so we're not putting anything into these inactive dumpsites anymore.

Second, we have a very aggressive program really to get out of the business of producing hazardous wastes. We have a very successful program for elimination of the generation of used solvent wastes. We want that stuff recycled and reused on base.

The Air Force has very recently at Hill Air Force Base developed a marvelous process for taking paint off of airplanes without producing hazardous waste. Indeed, the dried bead blast program that they have developed, if implemented DOD-wide will not only protect the environment, but will save, in fact, $100 million per year in labor cost and waste disposal cases.

So, the answer to your question is we're not creating additional problems for the future, and we are trying to get out of the business of producing hazardous waste.

Mr. RAY. You have standard guidelines that cover all the bases, kind of uniform guidelines. Does each base commander just have certain instructions that he's to do certain things to improve the situation?

Mr. SCHAFER. We have issued policy statements and directives on these subjects. They are handled then by the military departments and services, and orders are issued to their command chains. Of course, we have to balance our funding priorities at each step along the way, but the payback on these things has actually made them really very attractive.

Mr. RAY. Has the State or national EPA been brought in to these particular areas to give guidance, direction, or either to work with you to be assured that the standards aren't being violated in some sort of an unknown way to them?

Mr. SCHAFER. Yes, they have been. Part of my package for the record includes, for instance, a recently completed joint planning task force report on a hazardous waste cleanup technology developmental program, but we've also involved them in the design of our new solvent elimination program. We've also involved them in the design of a similar program to recycle and reuse waste oils and other petroleum products.

Mr. RAY. In the instance of national security, which you mentioned, do you anticipate that at some point in time, out of the 911 bases, you would have bases identified where national security would be more sensitive than other bases? I believe this blanket problem that we're concerned about.

Mr. SCHAFER. Yes, I think this national security issue is a nonproblem actually. We'd like to work out with you the idea that we want some blanket authority. To cloak our nefarious activities, and what not, is not intended.

Mr. RAY. Thank you, Mr. Chairman.

Mr. MCCURDY. Thank you, Mr. Ray.

Mr. Dube, I understand that you had a hand in the creation of the environmental restoration transfer account that is contained in the draft of the amendment that we have before us. Just how do you envision that this transfer account will work, and why is it preferable to a single account like that contained in the DOD Appropriations Act of the past 2 years? Why is it more preferable than the other?

Mr. DUBE. It may be easier for me to answer the last version than go to the how; deal with the why first.

Mr. MCCURDY. OK.

Mr. DUBE. As you know, for each of the last 3 fiscal years, or the budgets for the last 3 fiscal years, we propose that we carry out our responsibilities for environmental restoration through the normal accounts available to the organizations that are out there spending this money, and responsible for this. We put it in the operation and maintenance accounts for those costs that fall into that title, research and development, or procurement, in our budgets.

In each of the last 2 years the Appropriations Committees have appropriated money in a single account. Now, we're opposed to the single account on both philosophical and practical grounds now, and more and more practical grounds are becoming important.

Philosophically it's a function of best utilization of the existing financial management system and a reflection of the responsibilities of the individual organizations involved in the accounts through which those responsibilities are carried out. Environmental restoration is not really something that the Secretary of Defense ought to worry about, and ought to be responsible for the resources without reference to the individual organizations that are carrying out those programs, and who are, in fact, executing those programs under the overall policy direction of the Secretary of Defense.

That's why we'd rather see the normal financial mechanisms used with the ability to provide information in terms of what are the totals that we're spending in that.

Now, in addition to the philosophical approach, we're starting to develop a number of practical problems with respect to the clear delineation of environmental restoration, and the ongoing operations of the Department, and to make consistent and necessary distinctions between those two. More and more questions are coming up everyday with respect to what is properly chargeable to that separate appropriation as opposed to the other things.

For example, the operation and maintenance accounts are available for expenses not otherwise provided for, and that requires now our clear delineation between what is within the scope of environmental restoration appropriations and the normal operation of maintenance accounts of the services.

In addition, we've had some problems occasionally with flexibility. In one year we couldn't obligate all the money that had been appropriated into that separate fund because the application of restrictions on how much money could be spent in the last 2 months of the fiscal year. We wouldn't have had that problem had they been in the other accounts.

And in other occasions we've had requirements that we would have been willing to make from other appropriations, but could not effect transfers to this account.

So, we would prefer then to be able to use the existing mechanism. It became clear to us though that we weren't going to succeed any more this year with the Appropriations Committees in getting them to enact the funds the way the budget is formed, so we proposed to them that if they choose to appropriate it in a single account that we'd be allowed to transfer any money appropriated into the accounts that are responsible for those functions and use the existing organizational mechanisms to do that. That gives us most of what we're looking for in this, and provides the——

Mr. MCCURDY. I believe that's the way ours is written? Is that your understanding?

Mr. DUBE. That's correct, yes, and we're supportive of that particular concept. The money would be appropriated into this account, but not spent out of it. It would be transferred to the accounts and organizations that required it in order to carry out the normal financial processes of the department.

Mr. MCCURDY. Gentlemen, thank you. We have questions the staff has prepared, that we'd like to have you work with the staff and see if we can get some answers to those for the record. Some of

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settle the phenomenon of federally owned or operated hazardous wastesites.

My bill, H.R. 2817, contains an important provision which requires the Federal Government to get out of the business of protecting, and to get in the business of cleaning up the pollution that we may have been responsible for creating.

We require that the Federal agencies involved work with the EPA to identify and evaluate hazardous wastesites, and get them listed on the NPL. The Federal agencies are then put on a schedule for getting actual clean up planned and underway, guided by interagency agreements with the EPA.

[illegible]

[illegible] H.R. 2817, is a most effective and sensible way of requiring the Federal Government to get about the business of cleaning up its own backyard, and I look forward to working with you on the adoption of appropriate language to H.R. 2817.

Mr. Chairman, I'd be happy to respond to your questions in the 12 minutes we have before we've got to go vote.

Mr. McCURDY. Good timing Mr. Eckart.

We on this panel, and full committee, appreciate the tremendously hard work and effort that you've been involved in, and you've put into the drafting of this bill.

There is a problem. I think everyone that we've heard from admits that there is a problem; and that there are efforts underway to try to address them. Not everyone will be satisfied with those efforts. But I think it's important and incumbent upon us, and this committee—I think when Mr. Aspin appointed this panel, he indicated clearly that we want to be involved in the direction of that cleanup, and we want to help establish a unified approach to it.

Mr. ECKART. We want your involvement, Mr. Chairman. It's critical. As you know, the Federal facilities, particularly military facilities, are scattered in congressional districts virtually [illegible]

[illegible]

eral agencies should be treated the same as the private sector, no better, no worse, and that we make clear that we are concerned about the environment, and we're going to play a very integral role in the development of a uniform Federal program to deal with our own toxic substances.

And, again, with that general statement, I just want to thank you for your involvement, thank you for your testimony today. We appreciate the efforts that you've already made, and look forward to working with you on the floor on this amendment as we present it.

Mr. Hall, do you have any questions?

Mr. HALL. I don't have any questions, but I do appreciate your testimony.

Mr. SCHEUER. Thank you.

Mr. Scheuer. Next I have here Mr. William Hedeman, Jr., Director, Office of Emergency and Remedial Response, Environmental Protection Agency, and Gene A. Lucero, Director of Waste Programs Enforcement, Environmental Protection Agency.

Gentlemen, welcome before the committee today. I think you have a prepared statement. And, with that, I would welcome any statements you have at this time.

STATEMENT OF WILLIAM N. HEDEMAN, JR., DIRECTOR, OFFICE OF EMERGENCY AND REMEDIAL RESPONSE, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY GENE A. LUCERO, DIRECTOR OF WASTE PROGRAMS ENFORCEMENT, ENVIRONMENTAL PROTECTION AGENCY

Mr. HEDEMAN. Thank you, Mr. McCurdy.

As you indicated, with me this afternoon is Mr. Gene Lucero, who is head of the Enforcement Program for Hazardous Waste. He is here because many of the issues, in our judgment that are before this committee, transcend and affect our enforcement programs nationally.

And as my testimony will indicate, and as I think some of the questions afterward will follow, that will become more clear.

I am the Director of the Office of the Emergency and Remedial Response, which is otherwise known as the Superfund Program at EPA, and I have a prepared statement which I would like to submit for the record, and then amplify on that.

Federal response to hazardous waste problems at Federal installations has been a continuing concern of EPA since the enactment of the Superfund Program. And while our efforts have been focused primarily on private sector problems, and those of municipally controlled facilities, we have been working with a number of Federal agencies to help them with their problems.

[illegible]

We have a number of Federal facilities on the National Priorities List, of which 100 are Federal facilities.

When the Superfund Program began we implemented that through what is called the National Contingency Plan, and we had one major problem with respect to Federal facilities in that plan. That is, that the current statute that we administer precludes us from spending any money out of the Superfund trust fund for any restoration of Federal facilities. And for that reason, we decided that in developing the national priority list in this country we would exclude from that any Federal facility site.

That did provoke, among other things, criticism, and this past February we proposed revisions to the national contingency plan; we proposed to delete that prohibition.

In addition, Superfund is unique in that there are 13 Federal agencies that actually administer its provisions, and that is done through a National Response Team that I chair, and on which DOD and DOE, and other Federal agencies, participate.

Regardless of that, and some of the points I've just made, it's very clear that from testimony that I've heard, and from issues involving H.R. 2817, that Congress and others are asking for more.

Our concern from EPA's perspective is exactly who will have the primary role in hazardous waste response at Federal facilities. Our concern is that the impact that that may have on the agency's resources in dealing with the other national problems, may conflict with a desire on the part of the agency to achieve consistency nationally in terms of cleanup.

The current statute, as well as all the amendments associated with it, require that any remedy selected deal with an uncontrolled site, be cost-effective, and more importantly, that that remedy cannot be selected unless it will adequately protect public health and the environment.

That standard of adequately protecting public health and the environment is the same standard that exists in every other Federal law that we administer from which come Federal standards and guidance.

With that background, I want to make four points that I think are the major issues with respect to this question before the committee.

The permit requirements that come, for example, out of the Clean Water Act and the Clean Air Act, the Safe Drinking Water Act and the Clean Air Act, and the like, are a direct result of the permit requirements that we have placed on private industry. Industry has to meet certain conditions imposed on them.

The difficulty that we have in dealing with uncontrolled hazardous wastesites is that we are dealing with past actions and not future actions.

We are of the opinion that the process that exists in the national contingency plan now, leading toward the selection of a remedy that adequately protects public health and the environment, is a process that is equivalent to the processing of a permit.

And, second, that the provisions that will be included in the revised National Contingency Plan next week to adequately protect public health and the environment by requiring that each remedy meet or exceed applicable Federal standards. Our provisions will assure in the end that the remedy selected would be the same as if they were selected through a permit process.

And for that reason we have taken a position in the 5 years of administering the Superfund Program that with respect to fund-financed remedies, and enforcement remedies that Mr. Lucero was responsible for, no permits are required to implement the remedies selected.

The irony is that it appears that such permits would be required through a reading of H.R. 2817 for Federal installations, but that the approach taken by EPA with respect to fund-financed remedies, and enforcement remedies at the private sector, would not require such permits.

EPA advocates that no permits be required for any of those three categories, and that has been the position that we have taken in the administration's bill, and in staff language that has been presented—draft language that has been presented to your staff for consideration in this issue.

The second issue is what EPA's role should be. Its role in response actions initiated by other Federal agencies to date can be characterized as consultative. H.R. 2817 would give the agency a concurrence role.

Again, the bill the staff drafted we have presented to you would envision a concept in which EPA would have a concurrence role in the selection of remedies at Federal facilities, which would go beyond the role we currently assume, and would, in the process of that concurrence role, incorporate to the extent necessary any State standards that may be necessary to adequately protect public health and the environment.

Third, as I've indicated, the National Contingency Plan is the basis for determining whether these remedies do protect public health and the environment, and it requires that all of these requirements be met or exceeded.

I have experienced in the 4 years that I've administered this program that there are in many situations existing Federal standards that apply to the particular problem we found at which a remedy can be achieved that does adequately protect the public health.

I have also seen situations in which there are no Federal standards, and that it is necessary to incorporate State standards on a particular contaminant in order to come to a conclusion as to what is an adequate remedy.

But I have also seen standards, particularly coming out of States, that, if applied, would have an incredible delay on the implementation of programs to clean up this country's problems. These stand-

ards are predominantly focused on siting. We are seeing a national trend of States enacting laws that prohibit the siting of hazardous waste facilities.

Very frankly, in many of these remedies it is necessary to dig up or exume the waste, treat it, and then redispose of it in the same location. By treatment we are able to either remove the contaminants of concern, or solidify the waste so it will not migrate, or solidify the area surrounding the waste.

What we are seeing with respect to many States is a siting prohibition that would prevent us, if we had to get State permits, or meet exclusively State standards, from achieving that remedy, and to pick up on Mr. Schafer's point, require us to take that waste at extremely expensive cost to another State to dispose of it at a commercial land disposal facility.

The risks of transporting that waste interstate to other areas is of great concern.

Finally, we are concerned that we must have a process in this country that allows us to move quickly to implement these remedies. Most of the problems affecting ground waste, including the one in your State, affecting hazardous waste, including the one in your State, relate to ground water. Solvents such as TCE that get into ground water move quickly, and once we have studied the site and selected the remedy, we believe it is essential that we can move as quickly as possible to construct that remedy and capture the situation as it currently exists in our study.

That is why we feel it's necessary to have a very timely process that cannot be disrupted by a duplicative process that involves permitting.

In response to your staff's request, we have drafted language on State permit alternatives that this agency believes fully meets any State concerns, but also meets our concerns with respect to delay and the need to accelerate cleanup in this country.

Before I conclude, I want to reiterate the administration's concern with the overall progress of reauthorization. As you are aware, the taxing authority expires on Monday, and there are 11 congressional committees now overviewing the reauthorization of Superfund. We have had to already take steps to slow down the actual construction at 57 sites in this country.

There are important and complex issues before the Congress, but I wish to stress that among them is the need to quickly reauthorize Superfund so that we can continue to respond with the momentum that we already achieved in this program.

Mr. McCurdy, I thank you for the opportunity to make those remarks, and Mr. Lucero and I will be available now to answer any questions that you have.

[The statement of Mr. Hedeman follows:]

PREPARED STATEMENT OF WILLIAM N. HEDEMAN, JR.

Good afternoon, Mr. Chairman and members of the Panel. My name is William N. Hedeman, Jr., and I am Director of the Office of Emergency and Remedial Response. With me is Gene Lucero, Director of the Office of Waste Programs Enforcement. It is a pleasure to appear before this Panel today to discuss EPA's views and concerns with Superfund reauthorization as it affects Federal hazardous waste facilities. My presentation will be brief; I will outline generic principles and concerns

for EPA's role in this area, and I will then be happy to respond to questions involving specific circumstances or legislative appraches.

Federal response to hazardous waste problems at Federal installations has been of continuing concern to EPA throughout the first five years of Superfund. Although our attention has focused primarily on private sector uncontrolled hazardous waste sites, we have also expended resources to assist Federal agency activities relating to such sites at existing or former Federal facilities.

As part of our effort to respond to the national problem, EPA has compiled a national inventory of potential Superfund sites. There are presently over 22,000 sites in the inventory, including 706 Federal facilities. Eight months ago, EPA proposed for comment as part of the revisions to the National Contingency Plan (NCP—the regulatory framework for Superfund) removing the current regulatory restriction on listing Federal facilities on the National Priorities List (NPL). We are now considering the comments we received on that issue. Concurrently with that proposed change, we have worked with various Federal agencies to score their sites and have proposed a total of 42 Federal facilities as additions to the NPL, should the regulation be changed.

In the area of actual cleanup, EPA has had a Memorandum of Understanding (MOU) with the Department of Defense since August, 1983, which outlines the process by which cleanups at DOD facilities will proceed. I am attaching a copy of the MOU to my testimony. Also, EPA co-chairs with the U.S. Coast Guard the National Response Team (NRT), a committee of 12 Federal agencies that meets monthly on emergency and hazardous waste response issues of national concern. The NRT is the interagency group which assists EPA in revision of the National Contingency Plan.

It is evident, however, that Congress and the public are looking for something more from the Federal government in its response to Superfund sites at Federal installations. EPA, because of its experience with Superfund and its general environmental engineering expertise, may be the natural choice for a primary role in hazardous waste response at Federal facilities. Yet, there are considerations of scope and capability that require us all to work together to design a process that safeguards public health and meets environmental concerns, while allowing an expedited response to sites. Let me list our concerns for your consideration:

1. We feel, consistent with our approach to private sector Superfund sites, that no permits should be required for cleanup actions at Federal installations. Let me hasten to add that the substantive issues and concerns that would be dealt with through the permit process should be responded to, and they will be through the comprehensive remedial planning process undertaken by DOD and other Federal agencies. It is the time and duplicative analyses for the actual permits that we feel can be eliminated without prejudice to the quality of cleanup.

2. EPA's role in the response actions initiated by other Federal agencies should be characterized as consultative. The Agency can affect cleanup decisions by other agencies when it is consulted in a timely and appropriate manner. The MOU with DOD provides a good model of how such consultation can work.

3. The National Contingency Plan is the basis for determining whether proposed remedies protect public health and the environment. The NCP requires that all Federal environmental and public health requirements be met or exceeded in designing a Superfund remedy and that similar State requirements also be strongly considered in that process. This is the level of control we expect Federal agencies to meet. However, we need to be able to consider the basis for such State standards before determining whether they must be met, particularly if a higher level of control and more expensive cleanup that did not provide a significant improvement in environmental protection might result from their application.

4. We are concerned that disputes between EPA, Federal agencies, and the States as to the appropriate level of cleanup be resolved quickly, so that cleanup can proceed in a timely manner. An expeditious dispute resolution process should be developed to ensure that this is the case.

Before I conclude, let me reiterate the Administration's concern with the overall progress of reauthorization. As you are aware, the taxing authority expires on Monday, and the Administrator has already taken steps to slow down actual construction work at 57 sites. There are important and complex issues before you for your consideration, but I wish to stress that among them is the need to quickly reauthorize Superfund so that we can continue to respond to these sites.

Thank you, Mr. Chairman. That concludes my prepared statement, but Mr. Lucero and I will be glad to answer any questions you may have.

Mr. McCURDY. Thank you, Mr. Hedeman.

In the 4 years that you've been director of this program, and have, I'm sure, been aware of the Environmental Restoration Program the Department of Defense has been conducting. How would you characterize DOD's progress, fair, moderate, good, bad? Do you think we're making sufficient progress? Do you think the Department has dedicated enough resources to address those particular problems?

I don't mean to put you on the spot, but I'm going to. What have the Department of Defense and the Department of Energy done? Are you satisfied with what they're doing?

Mr. HEDEMAN. I don't think anyone ever seems to be satisfied with the progress we're making in this area. But let me say that like Mr. Schafer who worked for EPA for 10 years before he went with the Defense Department, I worked for the Defense Department for 10 years before I came to the EPA. [Laughter.]

So I must look at it from many perspectives, and I happen to have a position with the Defense Department that was involved in the clean up, or the imposition of the Clean Air Act and Clean Water Act standards and permits on DOD installations.

As those 2 acts are passed, I noticed—I observed when I was at the Defense Department an initial trend of moving slow. And frankly, I observed that trend in my first 2 years of Superfund.

But, very clearly, in my mind both Energy and Defense have embraced a very strong commitment toward dealing with the problems of hazardous waste. They are very cognizant that they are not problems that can be corrected overnight and it's going to require tremendous amounts of money and appropriations from this Congress to deal with the issue.

And I would say that the commitment of the Departments themselves, the heads of those departments, and of the staff that I deal with daily, is satisfactory to me. It perhaps was not satisfactory in the early years, but I think it's because everyone in this country was grappling with the magnitude of the issue at that time, and the extent of commitment that may be required.

There is no question in my mind, frankly, that the same commitment that the Defense Department made to achieving compliance with the Air Act and the Water Act when I was at Defense in the latter part of 1970's has matured into a similar commitment in Defense and Energy today.

Mr. MCCURDY. You mentioned the National Priority List (NPL). I'm curious as to the timing of the change on the NPL by the inclusion of the Federal facilities. Why is that? Why does it happen to be next week?

Mr. HEDEMAN. Because the national contingency plan has gone through a public comment process. I transmitted it to OMB for review two weeks ago, and I was advised today that it has been approved by OMB, and it will be signed by the administrator at the end of this week, or Monday.

Mr. MCCURDY. But you assume that the reauthorization will contain requirements for Federal installations?

Mr. HEDEMAN. It was the position of the agency that it would be appropriate to list Federal facilities. That was the position we took in the plan. We had no such assumption, and though it is clear that that assumption appears to be embraced in H.R. 2817, I would

say that there simply is just an agreement between the administration and those involved in H.R. 2817 on that issue.

Mr. MCCURDY. On that list is there a relative priority as to the degree of severity of those sites? Are they all—on the list itself. I mean, do you prioritize the level of the problems for each side?

Mr. HEDEMAN. Our current approach would be to put those sites on the list in the order of priority that they would receive through scoring, so that rather than lumping them all into one basket, they would be represented in the various classes or categories of—that corresponded to private sector sites based on comparable scores.

Mr. MCCURDY. Based on that, how do you foresee the Federal installations scoring vis-a-vis the private facilities? Are they as bad? Are they worse? Are they as critical? What's the relative standing here?

Mr. HEDEMAN. One can get a score of anywhere from zero to 100. There are, I think, about 750 installations to be scored, or that are in the process of scoring. Only 42 of them have scored high enough to get on the national priority list, which has a cutoff score of 28.5.

I would say several of them, and I frankly don't recall them by name, score fairly high, but the majority of them have a relatively moderate score of somewhere in the 28.5 to 35 category.

Mr. MCCURDY. How would a Rocky Mountain Arsenal score?

Mr. HEDEMAN. You'll have to permit me to furnish that for the record. I just don't have off the top of my head these scores for Rocky Mountain Arsenal, but I can furnish it for the record and let your staff know tomorrow morning.

Mr. MCCURDY. Are you aware of Rocky Mountain Arsenal?

Mr. HEDEMAN. I have heard of it, yes. [Laughter.]

Mr. MCCURDY. I would hope so.

The compromise draft suggested by the National Governors Association provides that the State can challenge the finding of the administrator to reject State standards through judicial review prior to the initiation for remedial action.

I understand that the EPA and the administration is strongly opposed to any prior judicial review. What is the basis for this opposition, and can you tell us short of the draft that you submitted, what is a workable solution?

Mr. HEDEMAN. That is one of the issues that we believe affects our enforcement program, and goes beyond the realm of Federal facilities, and I would like Mr. Lucero to respond to that.

Mr. LUCERO. There are several points I'd like to make, Mr. McCurdy.

First of all, as Mr. Hedeman said, of paramount importance to the agencies is that there not be delay during the cleanup of any one of these sites. As he mentioned, that there are environmental problems that can get substantially worse, particularly ground water, if we don't move as expeditiously as possible.

The provision in the National Governors Association would have allowed a State judicial review where there was a disagreement over the State standards to be applied.

We're concerned for several reasons. First of all, we don't think that that provision stops at or could be written to stop at just allowing States to raise issues. It would allow a number of other parties, including the potentially responsible parties, and possibly

others, as well as citizens, to raise challenges to the cleanup selection which would result in substantial delay.

We believe H.R. 2817 provides already for meeting the fundamental requirements of due process for potentially responsible parties to challenge the selection of the remedy, and that they need not at this point be able to stop the cleanup process to have that concern considered by a court.

There will be a time either during the cost recovery action at the end of the process, or certain other mechanisms, whereby they can raise their challenges.

Setting up a State provision would allow these parties to raise their issues, and would no doubt result in a substantial delay. We just think that Congress has made it very clear that it did not intend that cleanup in this country be delayed while certain legal issues are litigated, and that's the kind of balance that we've been working toward.

And, again, I would emphasize we think the H.R. 2817 deals with the private parties interest, and provides them vehicles to raise those concerns at appropriate points.

The draft that Mr. Hedeman referred to that we have provided in response to the committee staff request, we think provides the States alternatives which would eliminate the delay that we're concerned about and still give them a mechanism by raising the issues and getting them resolved.

Mr. McCURDY. Is this issue the concurrence that you were talking about, the consultative versus the concurrence?

If I might be a little parochial here, let's take an example so we can understand this concretely.

Take an Air Force facility, Tinker Air Force Base, or Sacramento, I think, would be another example, with Mr. Fazio behind you. There they, in the 1940's, injected in the wells, and allowed seepage in other methods, or pollution, solvents, very, very toxic materials, and, of course, now they're starting to discover these. Some of them have entered the water table. Some remain onsite. Some of them are now offsite.

With the environmental restoration program as it is, the Air Force has identified they'll go onto their four phases, the study phase, et cetera, the cleanup. How do you see this legislation affecting that process? That's a broad question.

Also, what's the State's role in that?

Mr. HEDEMAN. The current procedures that we have in the memorandum of understanding would be for EPA to provide any technical advice to Defense at that facility, that they would require in selecting a remedy. But that the remedy itself would be selected by the Defense Department after providing input into—receiving input, if necessary, from EPA and the States.

What we have submitted to the committee for their consideration, at least at the staff level, is a process in which those remedies for sites on the National Priority List would be concurred on by the Administrator of EPA rather than simply inputted through technical advice. And that in making that determination the Administrator would have to require the imposition of any state standards that States had brought to his attention, or to the Defense Department's attention, through the review process, unless

he determined that such remedy was—such additional standards would not be necessary to adequately protect public health and the environment through the NCP standard.

Mr. MCCURDY. But what if they don't concur as to the standards, and there's not a permit function? What happens if the State of Oklahoma says "Wait a minute, EPA, or DOD, it appears that we're not satisfied with 1 part per billion, or 200 parts per billion, or whatever the standard might be." What is their alternative under H.R. 2817 and the proposal that you would submit?

Mr. HEDEMAN. Under H.R. 2817 their alternative is to refuse to issue a permit to the Federal installation to implement the remedy, which puts us, I think, into a catch-22-type situation.

Under the proposal that we're talking about, the provision is for the State if they believe that the Administrator's decision is unreasonable, to nonconcur, so to speak, and to essentially agree to pay the additional cost to meet the remedy.

Those options would then be presented to the Congress, who in the end is going to have to decide one way or the other what should happen to the appropriations process. The State, if they believe themselves to be correct in the matter, would then proceed to an enforcement action to recover the addtional moneys that they put on the table, so to speak, to meet their remedy.

Mr. MCCURDY. Recover it where? What process would they recover it by?

Mr. HEDEMAN. Through a judicial process in a U.S. district court.

Mr. MCCURDY. Postprocess, in effect?

Mr. HEDEMAN. Would be a postprocess, and it would be a—as we envisioned it, a process that would allow the remedy to continue, and continue in a manner that captured the site conditions as they existed at the time at which the remedy was selected. For example, TCE can move at a fairly rapid rate in ground water, and if we do not implement these remedies, at the same time we have the information available, we have to go back and frankly restudy the entire site to pinpoint exactly where the migration of that contamination has gone to.

Mr. MCCURDY. Under today's law, does the State have a right to issue permits? They do not under current law, or do they? For site.

Mr. HEDEMAN. Our position for fund financed remedies out of the Superfund and for enforcement actions brought against the private sector, is that no permits are required from States for onsite response actions.

If the response action involves a transport of waste to a facility offsite, then we do require that it go to a fully permitted facility.

We have remained silent, frankly, on whether or not Federal facilities must obtain these permits, and I'm not aware of whether the issue has or has not arisen in any administrative or judicial context.

Mr. MCCURDY. Mr. Ray.

Mr. RAY. Mr. Chairman, at this time I think these remaining questions will probably be submitted to the record. So I will just yield my questions at this time because we have other witnesses.

Mr. MCCURDY. Gentlemen, again, thank you. I appreciate it, and I know the next witness does too, but you heard my statements

earlier, and I think I need to reiterate them, that having seen the draft proposal, to be candid with you, that you submit it, and the States have submitted it.

There are certain areas that I find much more difficult to accept from a philosophical standpoint, and that is, first of all, you can be assured, unless my colleagues overrule me on this panel, that the State will not have a prior judicial review based on any legislation that we would support. However, the draft that you submitted which appeared to be an appeal to Congress through authorization appropriation process, will not be in that language either. I think they could have a postjudicial reform, or review, and I think that is appropriate. But prior judicial review, I think, is unnecessary, and could be, in fact, harmful because of the—any potential delay.

I also tend to lean, because of discussions with the panel earlier, to the provision that if there is a differential between the State and Federal standards, that the State be required to put up some funding to address that and would have a review to recover that at some point, other than just through Congress.

And I think that's probably somewhere between both of those provisions.

I don't sense at this time that we will follow the Senate's action of totally eliminating permits required. I sense that there are 11 committees out there, 4 in this body, that are looking at this bill. I'm not going to get involved in upsetting the delicate balance that has been at work to try to get this bill on the floor. I think for us to do that would be presumptuous, and would create a totally unnecessary fight which I'm not sure we could win if we wanted to.

So, again, that's for your benefit, to give you an idea of where we're coming from. Again, my colleagues may not agree, but I think that's the direction that I tend to favor.

If you have major problems with that, you might want to address them now.

Mr. HEDEMAN. May I react by saying that the concepts that we've presented to your staff are not new. The—a similar issue with respect to the role of the States vis-a-vis the Federal Government emerged in the Clean Water Act in the mid-1970's. And the issue there was whether or not the will of Congress could be in some way toward it through the Federal or State permit mechanism in the area of Federal water projects and navigation projects.

The judgment of the House Public Works Committee at the time was that the movement of interstate commerce and navigation is a national interest, just as, I think, you will hear from the Departments of Defense and Energy that the programs they administer are a national interest.

And that there should be a process that would allow for the Congress to have the final say as to exactly what should proceed and should not proceed, and that that process should not be State permits.

And so there is a provision in section 404(r) of the Clean Water Act that basically duplicates the concept we have made available to your staff. And essentially allows the Congress in the end to make the final decision through the appropriations process, as to just what or will not be done in the national interest.

And through that decision to waive, if you will, the State permit process, but at the same time allow the State to pursue more stringent remedies through costing.

The issues here, I think, come down, among others, to the constantly nagging problem of Federal supremacy in various national paramount issues versus States' rights. And what we have tried to do is to craft an approach that balances both.

Mr. MCCURDY. Thank you. As I indicated, those are the Chair's perceptions at this point in time, and the panel will have to act on those. But to indicate where we were, I think the fact that this panel has even addressed these issues, some could argue that we may be overstepping our jurisdiction in doing that. That is not my intention but, I think, it's important while we have the opportunity that we try to facilitate the cleanup of these sites; at the same time make it as reasonable as possible.

There were many areas within H.R. 2817 that I felt were inadequate in relation to the Federal facilities, I have to commend our next witness, Mr. Fazio, for his effort. He's worked with a number of us over a period of time, and provided significant leadership in trying to address this issue.

Those of us, again, who have Federal facilities, we love them, but we want them to be good neighbors too, and we're making sure that they're cognizant of the problems that might arise.

Mr. HEDEMAN. It was not clear in the comments that you made as to whether you were advocating permits as part of the Federal facility cleanup, or an approach that led to the equivalent of a permit in which the State could pursue its own additional standards, because, I think, that is one of our most significant, if not the most significant issue from the administration's and EPA's perspective.

Mr. MCCURDY. I want to confer with staff to get the exact language.

As we have it—under your suggestion you eliminated all Federal, State, and local permits, right?

Mr. HEDEMAN. Correct.

Mr. MCCURDY. The National Governors Association had suggested they only eliminate permits required under the Solid Waste Disposal Act of subtitle C. What we were discussing was—I felt that it was impractical, if not impossible at this stage, to go as far as you requested. Now, how far and exactly what that language would be, I'm not sure yet. But it would not be the elimination of all permits because, quite frankly, I'm not sure that provision would pass if it were submitted to the floor.

That's something that I'm sure you attempted to do in the Commerce Committee, or did not—staff, or someone behind you, is shaking their head no. I don't know. But that forum may have passed.

Mr. LUCERO. Sir, we want to just point out that if the question of permits, State or local permits, was raised, that will be a change in the way we're running the program presently.

As Mr. Hedeman said, we have maintained that the permits do not apply in order that we can keep going forward, and if you were to say that some kind of permit, whatever it is, is to be required,

that will be a change in the way we're currently running the program.

Mr. MCCURDY. Now, I understand that, but H.R. 2817, which is the vehicle we're trying to operate from, has that requirement, does it not?

Mr. LUCERO. For Federal facilities.

Mr. HEDEMAN. It does not have the requirement for permits for fund-financed or enforcement actions. H.R. 2817 removes the requirement for any Federal, State, or local permits for fund-financed out of the Superfund remedies, and for enforcement remedies. It includes that requirement for Federal installations.

Mr. MCCURDY. For Federal only.

Well, some modification of that is—if there is a possible compromise that can be reached as to getting it closer to those requirements that private industry has, then we're going to make a good faith effort.

Mr. HEDEMAN. That's exactly the issue.

Mr. MCCURDY. Yes, but the total elimination, I think, is virtually impossible at this stage of the game because as I read the consensus building for this bill on the floor of the House, I don't think we're going to be able to go that far. But if the Senate has already eliminated that, or has no provision, then there may be some room in the conference.

But, again, those are issues that staff and the panel will be working on. And that's the reason we had you here, to get your comments to see whether or not that is feasible, or where we go.

Mr. HEDEMAN. The Senate has taken no position on the matter. They have not eliminated anything. They just simply have taken no position on the matter.

Mr. MCCURDY. That's not inconsistent with the way they operate.

Gentlemen, thank you very much. We will submit some questions to clarify the record, and perhaps, if you will, continue to work with the staff as to the exact wording of this provision, and, again, we appreciate your testimony today.

Our next witness will be Congressman Jim Moody, who has a conflict coming up, so we're going to allow him to go before Congressman Fazio. I understand Mr. Moody has a schedule problem, and since I understood Mr. Fazio did not, we'd let him go first.

Mr. FAZIO. I think this is more important.

Mr. MCCURDY. Well, I thought that was the case.

Mr. MOODY. Mr. Chairman, I do have a 4 o'clock meeting in my office waiting for me, so I have to get back.

STATEMENT OF HON. JIM MOODY, A REPRESENTATIVE FROM WISCONSIN

Mr. MOODY. Thank you for the opportunity to participate in this hearing. Once again, I am pleased to testify before you in support of the excellent bill of my colleague, Congressman Vic Fazio, which would authorize a military hazardous waste cleanup Superfund.

The Fazio bill H.R. 1940, which I am very glad to be a coauthor, will enable the DOD to redress their enormous problem of hazardous wastesites on military installations with effective deadlines, and sufficient funding.

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Superfund bill, H.R. 3885, which I recently introduced
Public Works members, we deliberately remained silent on federal
because no consensus had clearly formed on the issue. Whatever
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your attention.

[The statement of Mr. Moody follows:]

PREPARED STATEMENT OF HON. JIM MOODY

Mr. Chairman and Members of the Panel, thank you for the opportunity to participate in this hearing today. Once again, I am pleased to testify before you, in part, in support of the excellent bill of my colleague, Vic Fazio, which would authorize a military hazardous waste cleanup "Superfund."

This bill, H.R. 1940, of which I am an original cosponsor, will enable the Department of Defense (DOD) to redress their enormous problem of hazardous waste sites on military installations with effective guidelines and sufficient funding. I commend DOD for taking a responsible lead among federal agencies in mandating cleanup requirements equal to those being done in the private sector. By revitalizing their Environmental Restoration Program, they will be ensuring the safety of our public health and the environment.

I fully concur with the changes to H.R. 1940 that were worked out between the Panel and Representative Fazio and I offer my support to the successful passage of this bill in the House.

It is my understanding, also, that the Panel is exploring options and proposals concerning the federal/state relationship over cleanup activities at federal and for the most part, military facilities. In the Superfund bill, H.R. 3885, I just recently introduced with Public Work Members, we deliberately remained silent on federal/state provisions because no consensus had clearly formed on the issue. Whatever may be envisioned by your panel or the Public Works Committee markup deliberations in the near future, I believe there must be the application of consistent clean-up standards by federal and state governments to ensure the degree of cooperation and commitment necessary for the long-term cleanup activities of our nation's vast number of hazardous waste sites. Our states must have a meaningful role in this process because they, even more so than the federal government, will be deemed responsible by the public at large for the quality and timing of the hazardous waste cleanups.

Thank you for your attention.

Mr. McCURDY. Thank you, Mr. Moody, and thank you for your indulgence in waiting to testify. We appreciate your comments. We will look at your record and look forward to working with you on the floor in the passage of the amendment which we tend to work out with Mr. Fazio.

Thank you.

Our next witness is the Honorable Vic Fazio, a Congressman from California, who has worked for considerable time now trying to develop some legislative proposals to address the environmental impact and environmental problems arising from the Federal installations. I think especially in military installations since he and I both share the honor of representing districts that have major Air Force bases, centers in them. This panel commends you for your initial efforts and appreciates your willingness to work with us. Your staff has been very good, and we applaud that effort, and I think we look forward to having a bill in an appropriate vehicle that has a broad base of support, and I think a consensus from this committee.

Mr. Fazio.

STATEMENT OF HON. VIC FAZIO, A REPRESENTATIVE FROM CALIFORNIA

Mr. FAZIO. Thank you.

First of all, I think we have three of the five Air Force logistics commands represented right here. We have a majority, if that means anything. I think in our involvement with the fledgling caucus how important it is to help support those sometimes overlooked and forgotten, but very essential elements of the Air Force.

We're all committed to sustain those facilities, and the service they render, as well as the jobs they provide, but I think all of us are equally concerned, as you said earlier, about protecting the health and safety of the people who work there and reside around those facilities.

And I want to begin by simply thanking you and the other members of the task force, particularly Mr. Ray, and the staff of the committee, Dr. West, and Mr. Steffes, and others who have worked so closely with us. I think it's been a proper approach to have continued to work with the Armed Services Committee because I think the interest is here and the expertise is here, and even though there are some who think that that resides only within the Public Works Committee, or the Energy and Commerce Committee, I'm here to testify that that's not the case, and we're very gratified that the task force was created, that the work that you're now embarked on is going to bear fruit.

And, as you indicated, we're not quite sure exactly how that will be picked, but we know it will happen, and hopefully some time this fall, as all of these forces move together, and hopefully find their way through one conference committee into one bill, and maybe to a signature.

I have some remarks that I would like to place in the record and spare you from at this point. They're, I'm sure, very compelling. I don't mean to criticize my staff. They're very well written, and I'm sure that they will mean something in my district, but I think

what I ought to do is just continue the kind of dialog you've been having with others about some of the problem areas that we all need to work on, and whittle down into something we can agree on. If that would accommodate the committee, I would like to do that.

Mr. MCCURDY. Excellent. Your remarks will be admitted into the record, and we look forward to a good dialog on some of these issues.

[The statement of Mr. Fazio follows:]

PREPARED STATEMENT OF HON. VIC FAZIO

Mr. Chairman, I would like to commend you and the other Members of the Task Force for your diligent and conscientious efforts to address this very serious problem.

As the Task Force is aware, over the years the Department of Defense has [illegible] hazardous wastes, [illegible] contaminated [illegible] Defense facilities. [illegible] have been found at more than 1,500 sites at some 100 military bases around the country.

From time to time in the past, the Defense Department has authored reports and commissioned studies that have been widely criticized. [illegible] Air Force base in Massachusetts, where contaminants are thought to threaten major municipal drinking water supplies, the Department of Defense has left its mark on communities.

The fences and barbed wire that surround our military facilities do not contain the poisons that are, as we speak, reaching into water supply of surrounding communities. It is an intolerable situation that we must squarely address. The federal government can no longer cleanup its sites to a different standard, under less scrutiny, and without any oversight from federal and state health and environmental officials. Indeed, the federal government should and must set the standard by which all cleanups occur.

The problem of military toxics may be dwarfed by the cleanups that will be required at private sites, if only in sheer numbers. But in a very real sense the struggle to get our federal property cleaned up is just as important. The federal government cannot demand from corporations what it cannot itself do. We have one set of environmental laws and they should apply to all equally, whether they are the largest federal agency or the smallest corporation, the laws should be applied in the same manner with the same commitment to protecting the pubic health and environment.

ADEQUATE RESOURCES/ENVIRONMENTAL RESTORATION TRANSFER ACCOUNT

Currently, funds in the existing Environmental Restoration Account, which has been set up by the House and Senate Appropriations Committees on an annual basis, can be expended for relatively limited purposes.

Money from the account was restricted in the same fashion as traditional operations and maintenance monies. The Defense Department was prohibited, for example, from spending money for procurement of essential hazardous waste-related equipment or from spending money on military construction—which is expected to consume more and more of the cleanup budget as we get further and further along in the cleanup process, i.e. as we do fewer studies and more actual cleanup work.

In my original bill, I created a centralized account to finance the cleanup work. Money from account could be spent for any environmental restoration purpose, including procurement, military construction, operations and maintenance and personnel.

Those same concepts have been embodied in the proposal before you today. The so-called Environmental Restoration Transfer Account is a centralized account for which funds will be authorized and appropriated on an annual basis. The money from this account can be tapped by the Secretary's designee for any purpose related to the cleanup, again including military construction and procurement. The transfer account, however, preserves the existing account structure within the Defense Department. The transfer account will provide for the expedited funding of all environmental restoration projects, for example, without tampering with the established Defense Department account structure.

In addition to facilitating the funding of the cleanup operation, the separately authorized and appropriated transfer account will provide the program with a greater degree of insulation from competing defense programs. It will assure the program of higher visibility and make it less vulnerable to unnecessary or capricious budget reductions.

EPA AUTHORITY TO OVERSEE DOD CLEANUPS

The Defense Department currently oversees its own toxic waste cleanup program. Unlike private and cleanups which have had to obtain EPA approval prior to begin operation, DOD has been free to pursue any cleanup action it deems appropriate, without EPA approval.

The lack of EPA involvement has led to a great deal of uncertainty and distrust in those communities affected by DOD past pollution. In DOD's case, there is no impartial authority to ensure that the cleanup actions selected by the Department will protect the public health and environment to the fullest extent possible.

EPA must be given a greater role in determining the cleanup actions at federal facilities. EPA is responsible for enforcing the cleanup actions at all non-federal sites which appear on the National Priorities List (NPL). EPA's role at the federal sites should be no less. DOD sometimes has motives to put off or to circumvent cleanup actions at federal sites as well.

The amendment before you, in conjunction with the existing provisions of H.R. 2817, the Superfund reauthorization bill reported by the House Energy and Commerce Committee, would provide that it would take three EPA has a greater role in all phases of the cleanup from the first discovery of pollutants to actions to determine the degree of contamination, to the final remedium cleanup phase.

Such coordination of efforts will help minimize the threat to the public health and environment.

COORDINATION WITH STATE AND LOCAL HEALTH AND ENVIRONMENT AUTHORITIES

DOD has consistently failed to coordinate its cleanup activities with state and local authorities. The General Accounting Office, in a report released earlier this year, found that the Defense Department coordination with affected federal, state and local officials has been insufficient to ensure the efficient and thorough clean up of DOD sites. Work has had to be redone.

State concurrence on all remedial actions at federal sites on the NPL provides the greatest assurance that the state's interest will be addressed by the federal agencies in carrying out their cleanup plans. In addition, I think it is critical to build in strong requirements for closer cooperation, coordination and communication between DOD, and the state and local regulatory authorities.

Again, the amendment before you in conjunction with the provisions of H.R. 2817 would provide this.

Too often the military and other federal agencies carry out their cleanup programs under a heavy veil of secrecy. Decisions such as these however, which have health and environmental implications for years to come, deserve to be subjected to the close scrutiny of affected governmental authorities as well as the public. Their provisions should be fully aired and justified.

That's another reason that the proposal before you also requires DOD to establish Technical Review Committees or Task Forces to review and comment on DOD cleanup plans. The Committees would be made up of officials from DOD, EPA and state and local regulatory agencies as well as citizens from the affected communities, and would help coordinate and formulate community input.

RESEARCH AND DEVELOPMENT

The Defense Department earlier this year estimated that the costs of cleaning up hazardous substances from its military bases would fall between $5 and $10 billion over the next ten years. And, from the estimates that we have seen in the past, and as the Department has readily acknowledged, the costs can only escalate as we get further along in the cleanup process.

The only way that we can hope to curb the costs associated with this very demanding program is to establish research, development and demonstration as a high priority of the program. The Department of Defense has entered into a cooperative agreement with EPA to jointly fund some research into new, more cost-effective cleanup technologies, and, I think the Department should be encouraged to do more

of this and to intensify its efforts to develop new cleanup technologies to address the cleanup problems that are unique to the military.

An example of how a research and development program can help hold down costs can be seen by looking at the research and development program associated with the Army's de-militarization of our chemical warfare agents. That research and development program, to which we have devoted in the range of $75 million, is expected to lead to cost savings of 30 to 35 percent in what had expected to be a $2 billion cleanup program. That's a $600 million savings that is expected to be realized as a result of the new less costly cleanup technologies developed by the program.

Further, the Defense Department needs a research and development program in order to encourage the development of new technologies that will reduce the newly generated waste created in basic DOD activities. One such technology, which I know Mr. Schafer and the Department fully support, is a new paint removal process, which utilizes a reusable plastic bead media rather than the old sand blasting equipment. This new process removes all types of paint in an average of one-tenth the amount of time of the sand blast technology and eliminates nearly all hazardous waste by-products.

So, I would suggest that this program is very important from both a budgetary standpoint and from an environmental one as well.

ASTDR/THE AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

There are a number of hazardous substances which are commonly found at Defense Department hazardous waste sites which are not commonly found at civilian toxic waste sites. By its own estimates, the Defense Department has determined that some 40 percent of the most frequently found contaminants at Defense sites are not commonly found at civilian sites. As a result it is less likely that EPA or the ATSDR would normally be inclined to initiate health assessment and risk assessment work on these contaminants.

The lack of standards or risk assessment data on contaminants is linked directly to the ability of the Department to initiate a cleanup action. Without toxicological data, without basic information on the risk a contaminant poses to the public health, a level of uncertainty is created which ultimately hinders the ability of the Department to initiate a cleanup action.

The amendment before you requires ATSDR and EPA to focus more on these developing toxicological data on these unique DOD contaminants. The Defense Department would be required to transmit funding and any toxicological data available to EPA and ATSDR, and in turn, these agencies would be required in a timely fashion to generate this information, which is key to determining the level to which a site needs to be cleaned up.

Generating more toxicological data, as required by this provision, will ensure that the public health and environment are protected.

Mr. MCCURDY. I don't know if you were here early enough to hear some of the areas that had been addressed which were, of course, the permit provisions and also the general questions of the transfer fund, which the comptroller mentioned, also citizens suits were mentioned, for just a moment.

I think we spent a lot of time just trying to find out our position vis-a-vis the Superfund itself, how federal installations are going to be dealt with, and in what context as in relation to a private citizen, or private firms.

And, also I understand—I'm not trying to take away from your statement—that the language that you have been working with required the duty to carry out research, development, and demonstration program with respect to hazardous waste. I think this is a commendable effort. You might want to elaborate as to how you envision it might work.

Mr. FAZIC. Well, we also now have the Senate taking action, and that can throw some additional ideas into the debate. And I might say that I share your interest in coming up with something that's

workable, and equitable, as it relates to the private sector approach.

I think we have two kinds of problems. If we deviate too much in one direction we either overburden the localities by not moving rapidly enough with the Federal cleanup, or we end up putting the Federal Government at a disadvantage by letting local standards, or state standards, become financially onerous to the point of irresponsibility. And it's somewhere in between that we have to cut I think the proper course.

I think that is something we'll probably be dealing with in a conference on this bill because I'm not here to say anything different than I'm used to saying in terms of the direction that the Superfund itself is taking, and the public or Federal component of that.

It was time to reemphasize, I think, the Federal role in cleaning up Federal installations, and they've certainly done that. And we may want to be refining that somewhat because it can be perhaps interpreted if that were the intent of the local entity, or State entity, unfairly to our taxpayers—Federal taxpayers' detriment.

But some balance, I think, can be reached, and my sense is that people who have worked on that bill in those other committees understand the need for that as well.

Let me come back—perhaps since we've touched on that maybe we could jump right to those issues.

I think, to begin with, I have felt, and I know I share this with some of you, that there's been an inadequate amount of attention given by EPA to the DOD cleanup. The DOD in seeking and obtaining an executive order to be exempt from oversight from any other agency, in effect, undid itself in some ways by not having the ongoing attention, cooperation, technical assistance, that hopefully would be derived from EPA.

It certainly wasn't a priority for EPA. They had other problems. And the military in every instance was not capable of handling the problems as effectively or as expeditiously even in some cases as they might have been with that assistance.

And I think it was also true that State and local health and environmental agencies were not always brought in, to the great detriment, it seems to me, of public confidence because typically they did comment, they were involved, but they weren't always involved in a voluntary or cooperative way.

I think one of the bottom lines of this whole thing is that we've got to make sure that State and local health and environmental agencies are brought in at the beginning, are listened to, and hopefully part of the consensus that's going to have to be developed about a strategy for cleanup.

I don't know exactly where we draw the line about what their authority is, but I'm willing to start from the premise that they should be able to have some sort of role in the ultimate decision. Exactly how we enforce that, I'm perhaps willing to be flexible on it, but I think the State concurrence that we are on the right track, and that the standards that they have are being complied with, is important to maintain.

I guess we would all share a frustration that EPA has not yet been able to come up with national standards that would obviate this issue to some degree. And when they do finally get to that

point, this hopefully will fade from the point it currently has in our discussion.

But for now I think it's important that we wrestle with it. I think EPA must have authority to oversee DOD cleanups, particularly those that fall into the National Priority List [NPL.] Clean up problems are obviously by anybody's definition serious ones, and I think there's healthy tension that needs to exist there.

Now, there are those in some settings who don't think that is constructive at all. They think it may only impede the military, and I'm not adverse to saying that I think the military when it gets its act together, and it's in the process of doing that, isn't going to perhaps outshine EPA in the process of cleaning up a number of their problems.

I think once the line of command is clear, the funding sources are clarified, the process begins to work, we will see the kind of precision that we hope for.

But at the present time I think that we have a lot to learn from each other, and the EPA certainly has a lot to contribute.

And I would perhaps be willing to consider, as I think my original draft did, treating smaller cleanup problems in a different manner than perhaps those 50 or 60 NPL cleanups. And that may be some ground for compromise, and conference committee. I don't know. We'll see. At least it's something I throw out as a possibility now.

But I certainly think to not give EPA responsibility for a final signoff on the major problems the military has on the NPL would be a failure on the part of the Congress to deal with a problem that needs to be addressed.

Before I go on, Mr. Chairman, do you want to break and come back at this point?

Mr. McCURDY. Well, we may in just a minute.

One of the things that I think we need to clarify, or restate—it is interesting that the three of us are the ones sitting here at this time—but it's really the question of priority within the Department of Defense. Each of us has a good understanding because of the areas that we deal with. If they had to make the choice themselves, generals as they usually are, would go for that B–1.

What we are saying, and I think the H.R. 2817 and the provision that you have provided also states that we believe this is a national priority, that with the transfer account, what we're trying to do is establish a fund that is clearly identifiable as being directed, or addressed, to this particular problem, and that it is a high priority item.

We're trying to assist the Department of Defense not burden them, and my sense of the language that you provided in your willingness to work with us, is really led by that.

Is that an accurate portrayal.

Mr. FAZIO. That's fair.

Mr. McCURDY. I think Mr. Ray would probably concur, that we're not trying to require new standards. We're just saying it is there, we have a problem, and we're going to make this a priority within the Department.

Mr. FAZIO. Mr. Chairman, I think we have a situation, and to some degree, until we pass this legislation, and some additional

time passes we'll continue to have it, where the solutions were too much at the whim of local conditions. How knowledgeable, well-connected a commander was at a facility, or whoever it was he placed in charge of this responsibility, how much pressure was coming from the public and the media, how much support, therefore, was coming from Dayton, or from Washington. We can't have that inconsistency, or that opportunity to do less than we know we want to do for all our constituents.

I think Senator Wilson, for example, initially when he looked at this problem, which is statewide in California, started out thinking that maybe we were simply competing local efforts, that we were adding more bureaucracy in getting more people involved in the decisionmaking than we needed. I think he's come a long way to the point where I think we're at, which is to try to balance the need not to make the process more difficult, but to get the kind of help and resources that are absolutely essential.

And I think that the longer we all look at this, the closer we get to the proper kinds of balance that I think you're pointing to.

Mr. McCURDY. I think one of the points that we continue to focus on has been that of the permits that the Senate has artfully opted to have in the area and decided not to address it. The question before this panel is whether or not we feel that it should be addressed, and whether or not it's in the best interest of the legislation, and the outcome of this particular vote, and whether or not it could be done.

And that is the philosophy of whether or not States should have not only just concurrence, but as to what extent they have concurrence. And I think from my viewpoint we would like them to be involved in the process. We believe that they should be involved in the process. That they should not be given a veto power, or the right to hold any Federal installation, or the Federal Government, hostage, in order to accomplish something that is inconsistent with how they hold the private sector in their State.

In other words, if Dow Chemical, or the ABC Chemical Co., or something, has a problem, a site, and an Army post in the same State has a site, and they're basically similar type problems, the State should hold both of those facilities upon the same standard, and that there should not be a higher requirement or responsibility for the Federal installation than there is for the private.

Now, how you crack that balance is, I think, where we are. Is that not a fair summary?

Mr. FAZIO. Mr. Chairman, I think that really reflects some of my thinking. I know under H.R. 2817 all Federal, State, and local cleanup permits are required. And I guess I'm concerned about the situation where we haven't resolved our differences, and confrontation occurs, and people can hold up permits, extraneous permits, simply to bring pressure to bear to get some decision that they can't get through the process of negotiation.

And yet I certainly wouldn't want any standards that are applied across the board to not apply. I think we're, as your example is a good one, interested in having the same kind of treatment. As long as that applies to every problem within the jurisdiction, I don't think the Federal Government can complain. We simply have to be careful though that there will be those who without any financial

responsibility will simply add to the fiscal burden of the Federal Government a cost that they would not apply to some private entity, or even some State project perhaps, if that existed.

I think Federal permits for clean air and clean water mandated for administrative purposes sometimes to local and regional authorities probably ought to be complied with.

I don't know that Resource Conservation and Recovery Act (RCRA), for example, is required, if EPA is going to be providing concurrence in whatever plan. They probably would keep that in mind before they signed off on it.

Some States and localities are far more complex than others, and that's part of the problem here. And each of these entities has to be negotiated with because that's the environment you're operating in, and that's where the need is coming from, and that's where the local agencies are going to be giving local political support, State legislators, and city councilmen.

But I think some—I think we can fall back on a consistency in situations like that, urging that standards apply to everybody, and if they are not being applied to rigidly, or excessively, to the Federal entity, obviously things should go smoothly.

But I think there is a concern about paying for cleanup, and I think that's another one of the issues that's being debated in the other committee. I don't think we can unnecessarily burden local governments with problems that were not of their creation, and some of them don't have the resources. But we can't be seen as a bottomless pit in a sense, particularly if standards are going to be set at a very, very high level, one that seems to be beyond what normally would be the case in a market basket of States.

Mr. McCURDY. Some of the language in our draft would require that that differential between the Federal standard and a State standard, if the state standard were higher, the State would be required at the initial phase to fund the difference, and then would have to appeal and show that it was necessary for public health to try to recoup that cost from the Federal Government at some point.

Mr. FAZIO. That could be reversed if the Federal standard comes out later to be at least as high, or higher. There may also be another approach which would be some shared responsibility for that additional cost, so that the Federal Government could help the locality, but at the same time the locality would have to think twice about entering into that agreement because they, in fact, would be liable for some of it, if not all of it.

I hate to say all of it because I know in some cases that might work a burden that they could not handle. I think we're talking in an area that we know so little about, it's hard to quantify, but I worry about that.

But I think the concept that we've just discussed, that you presented, is one that is worthy of some refinement. I think it's a good direction.

If I may go on to a couple of other issues, Mr. Chairman, you already mentioned the adequate resources that we need, the financial resources, and I think that speaks directly to the concept of the accounts that we were trying to establish.

Initially my bill was a little different than it currently is. I think the concept of a transfer fund makes a lot of sense. We wrestled with this a little bit when I testified earlier before this committee. I think that we want to preserve the role of the authorizing committee, and the appropriating committee, and we know that we have handled this in a kind of ad hoc manner in the past.

As I was just saying to you, Senator Stevens has, I think, rightly contributed a great deal through the years to solution of some of these problems because with his very powerful position he was able to revise the funding for this program, sometimes three times a year. Every time a bill went by he would take a supplemental, or a continuing resolution, or whatever, and increase the amount over the existing authorization limit because the demand had suddenly gotten to that point.

But we can't keep that up forever, and it is impossible to rely on any one individual, and so I think the approach provides the flexibility we need to continue to fund as we think we can spend the money.

I think we all share, as your introductory comments certainly highlight, the need to spend it when it's needed.

But there isn't really a great deal to be gained by just simply putting money out there in a pot, even in theory, when we are not really yet aware of how it could be expended.

I think the thrust of this transfer fund, the environmental restoration transfer fund, is really to provide the flexibility we need to do all the various kinds of things without having to come back and losing a year and say the Milcon process, or moving through the O&M accounts—as long as the Congress authorizes and appropriates funds at the beginning of the fiscal year, and at any point subsequently to this transfer fund, they ought to be able to draw down on that fund simply by providing us with notification that they're going to be using it for purposes that we have been already informed about, that it might potentially be used for consistent with that authorization and appropriation.

And then, of course, in an annual report, or a biannual report, that would allow us to do the accounting of the expenditures.

I think that's the kind of thing that we need a centralized and fully accountable one Congress has a handle on, but one that's sufficiently flexible to really not impede because that's not our purpose at all.

If you have any thoughts on that, I'd be happy to stop, and then we have a couple of other things.

Mr. McCURDY. I tend to agree. I think that's the direction that we have been focusing, and it makes sense.

I know the comptroller would have preferred to do it the old way, the way they've been operating, but I think that the need to have a readily identifiable source, or fund, requires us to move in that direction. I think that's the best balance I've seen, and the fact that it can be transferred to other uses at some point in time if it's demonstrated that there's no justification for that funding, and I think that's a fair compromise.

Mr. FAZIO. Can always roll into the next fiscal year when I'm sure we won't be able to use it.

I wanted to touch on problems related to the unique toxic substances that sometimes are found in the military facilities versus those that the EPA deals with, and the private sector, and elsewhere.

I think one of the really innovative ideas that has emerged is to create a separate research and development fund. It has really two benefits. One, I think in a way that will allow us to do things in a more timely way. It gives the Defense Department the opportunity to take some of the problems apparently by 40 percent of all the problems we find in this area, and highlight them, emphasize them, go to work in greater detail on them to try to reach some potential solutions, either by prevention, avoidance, or the cleanup technology involved, any number of approaches that would obviate the ongoing buildup of the problem, and cleanup those we've already gotten a handle on.

It gives us an opportunity to, I think, be far more timely in responding to our constituents. At the same time it has the potential to lead to cost savings of 30 to 35 percent. And if we're talking here about the kind of cleanup that I think all of us envision, that could well add up to something in the $500 or $600 million range in a relatively short period of time.

So I think it just makes sense that we go that route, and I think in related matters it would also be important for us to develop the kind of data base that we need to develop the sort of standards, risk assessment information that we need, again, focusing on the uniqueness of the problems that face us in military setting.

We do have a lot of relatively unique problems that are not found anywhere in the environment, the kinds of things that relate to Rocky Mountain Arsenal, that relate to jet fuel, a number of things that are just far more familiar to people who work in military environments than in the private sector.

And I think it's indicative of our sensitivity to the desire that we have of not putting DOD at the mercy of EPA. We're putting DOD and EPA hopefully into a closer communicative situation where they share what they've got, and in the case of EPA's strengths, we certainly intend to benefit, but whereas EPA has not got the time, or the inclination, or the expertise, certainly we don't want to hold back the military from making progress.

And so I think both those concepts need to be addressed, and hopefully would be contained in any draft that we would see this committee put out, and attach to any Superfund bill.

Mr. McCURDY. Very good.

Mr. Ray, we're not following a strict procedure here, and I hope that you'll join in at any time, and ask your questions.

Mr. RAY. No problem at all. I don't have any questions in mind. I certainly did enjoy the comments that you made, Mr. Fazio.

Mr. FAZIO. Thank you.

Mr. McCURDY. Vic, if we had members like Mr. Ray here all the time we wouldn't have any problems.

Mr. FAZIO. If the three of us could write this bill we wouldn't have any problems either.

Mr. McCURDY. He's at every meeting. He attends and you can't find a more attentive and responsible Member of Congress, and he's a delight to work with. I'm glad he's on this panel.

Mr. FAZIO. He knows a lot more about our facilities than we know about his, too.

Mr. MCCURDY. That's exactly right.

Any other areas that you would care to address?

Mr. FAZIO. I don't think so, except this ongoing debate over how we resolve disputes between the States, and EPA, and I heard some of the earlier debates over that, and we touched on it, but I don't like the idea of throwing something in the courts that drags out the process. I don't like the idea of getting Congress back involved again. I really think we've got to spend some time on this one because, if not, we don't come up with something, I think—I think we've got to, based on—I won't repeat comments I made earlier, but I think some of the approaches that people have seized upon are fraught with delay and some potential detrimental results for the people that we are hoping to enact this legislation to help.

And, you know, in many cases cooler heads will prevail, and compromises will occur, but when they don't they're often in the most contentious situations. And I think we've really got to bend too to see if we can come up with the proper mechanism.

I wish I had something particularly good to offer, but I think maybe the best thing is try to set the standards as we talked about earlier that apply, and try to be consistent, and maybe we can avoid a lot of these potential drawn out litigation, or hearing situations, or congressional involvement that we know meets our deadlines and not theirs.

Mr. MCCURDY. That's right. I concur totally. And, again, I think we have to look at the nature of the vehicle that we're dealing with, and the fact that it's going to move, and expected to move very quickly. There are a lot of different interests involved, and we're not going to be able to totally control the debate on this, and perhaps with some selective visits, you and I may be able to work also with some of those responsible parties to see which direction they're headed.

But I think philosophically we're in tune here, and I think we have the opportunity to make some headway.

I also want to say that the hearings we've had today with the relative agencies, the Department of Defense, the Environmental Protection Agency, and the Department of Energy, have been very helpful. Their opportunity to have some input, I think not only helps them, but also helps us in trying to draft the kind of legislation that will be productive in the long term, and responsible.

Again, I just want to commend you for your efforts publicly, and that of your staff. You've done a very good job. We appreciate that. And we look forward to working with you in the near future.

Mr. FAZIO. I want to thank you, Mr. Chairman, and Mr. Ray, for your deep involvement, and I hope we can meet the kind of time lines that are being discussed so that we catch onto the train that hopefully will leave the station some time this fall.

Mr. MCCURDY. In speaking to that, this will be our last set of hearings. We will have some panel meetings to get the consensus of the panel, and to finalize the draft, and we will have the worked out, that language agreed to, before this bill gets on the floor. And that also means if it comes on the floor in 30 minutes we are going

to be prepared to have this ready when the time comes. And that should be within the next couple of weeks.

Mr. FAZIO. Thank you.

Mr. MCCURDY. Very good. Thank you.

The panel is adjourned.

Documents pertaining to the amendment follow as an appendix.]

[Whereupon, at 5:05 p.m., the panel was adjourned.]

APPENDIX

PROVISIONS OF THE DRAFT AMENDMENT TO H.R. 2817

* Establishes a new subsection setting forth "Special Provisions for Department of Defense"

SEC. 151. DOD ENVIRONMENTAL RESTORATION PROGRAM

* Requires DoD to establish a centralized environmental restoration program.

* Requires the Secretary of Defense to identify an office within the OSD which shall have responsibility for carrying out the Defense Environmental Program in consultation with the Administrator of EPA.

* Grants the basic responsibility for implementing the Environmental Restoration, with EPA oversight and in accordance with all CERCLA guidelines, to the Secretary of Defense.

* Requires DoD to pay all fees and charges imposed by State authorities for the purpose of disposal of hazardous substances on DoD lands.

* Authorizes the Secretary of Defense to enter into agreements on a reimbursable basis with any other federal, State, or local government agency.

SEC. 152. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM

* Requires the Secretary of Defense to carry out a program of research, development and demonstration to develop innovative and cost-effective cleanup technologies.

* Grants the Administrator of EPA the authority to issue a special permit under section 3005(g) of the Solid Waste Disposal Act.

* Authorizes the Secretary of Defense to enter into contracts and cooperative agreements with, and make grants to, a wide range of public and private entities, including universities, to carry out research, development and demonstration projects.

* Requires the Secretary of Defense to collect, evaluate and disseminate all information related to the use, or potential use, of treatement, disposal and management technologies as a result of these R&D projects.

SEC. 153. ENVIRONMENTAL RESTORATION TRANSFER ACCOUNT

* Establishes an Environmental Restoration Transfer Account

* All funds appropriated to the transfer account shall be used account for DoD Environmental Restoration purposes as set forth in this question.

* Funds appropriated to the transfer account are subject to prior authorization.

* Funds transferred from the transfer account to any other DoD appropriation shall be merged and available for the same purposes and for the same period as the gaining account.

* The only exception for the use of funds for environmental restoration outside the transfer account is the use of O&M funds for emergency response actions and the O&M account concerned will be reimbursed from the transfer account.

* Amounts recovered through suits involving responsible third parties shall be credited to the transfer account.

SEC. 154. WIDELY-USED HAZARDOUS SUBSTANCES

* Requires DoD to provide the Agency for Toxic Substances and Disease Registry (ATSDR) with a list of the 25 hazardous substances which are most widely used by DoD.

* Requires EPA, at the request of DoD, to prepare health advisories.

SEC. 155. NOTICE OF ENVIRONMENTAL RESTORATION ACTIVITIES

* Requires DoD to promptly inform EPA, State, and local authorities of:

** The discovery of releases or threatened releases of hazardous substances at DoD installations;
** The extent of the threat to the public health and the environment;
** Proposals made by the Secretary to carry out response actions; and
** The initiation of response action.

* Requires DoD to give EPA and State and local authorites an adequate opportunity to review and comment prior to undertaking any response action.

* Encourages DoD, where possible and practical, to set up Technical Review committees to review and comment on DoD cleanup proposals.

SEC. 156. COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT

* Allows DoD compliance with the public participation requirements authorized under CERCLA to constitute fulfillment of similar requirements under the National Environmental Policy Act.

SEC. 157. ANNUAL REPORT TO CONGRESS

* Requires DoD to submit an annual report to the Congress on DoD's progress in implementing the requirements of the Defense Environmental Restoration Program and CERCLA.

SEC. 158. MILITARY CONSTRUCTION FOR RESPONSE ACTIONS

* Authorizes the Secretary of Defense to carry out a military construction project to carry out a response action after a notice and wait period.

SEC. 159. DEFINITIONS

AMENDMENTS TO H.R. 2817, AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

* Change to Sec. 325--Provide for a national security waiver if the Presidents determines that the release of information at a specific site in accordance with Community Right to Know provisions of H.R. 2817 would jeopardize national security.

RHCST

[STAFF DISCUSSION DRAFT #2]
SEPTEMBER 19, 1985

Amendment to H.R. 2817 (Superfund Amendments of 1985)
Offered by Mr. _____

(Page and line numbers refer to the bill as reported by the Committee on Energy and Commerce)

Page 86, line 23, insert ``(a) IN GENERAL.--'' before ``Title I''.

Page 95, after line 23, insert the following new subsection:

(b) SPECIAL PROVISIONS FOR DEPARTMENT OF DEFENSE.--Title I of CERCLA is amended--

(1) by inserting before section 101 the following: ``Subtitle A--Response, Liability, and Compensation''; and

(2) by adding at the end thereof the following new subtitle:

``Subtitle B--Department of Defense Environmental Restoration Program

``SEC. 151. DOD ENVIRONMENTAL RESTORATION PROGRAM.

``(a) ENVIRONMENTAL RESTORATION PROGRAM.--

``(1) IN GENERAL.--The Secretary shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

``(2) APPLICATION OF SECTION 120.--The program shall be carried out subject to section 120 (relating to Federal facilities).

``(3) CONSULTATION WITH EPA.--The program shall be carried out in consultation with the Administrator.

``(4) DESIGNATION OF ADMINISTRATIVE OFFICE WITHIN OSD.--The Secretary shall identify an office within the Office of the Secretary which shall have the responsibility for carrying out the program.

``(b) PROGRAM GOALS.--Goals of the program shall include the following:

``(1) The identification, investigation, and cleanup of contamination from hazardous substances and wastes.

``(2) Correction of other environmental damage, such as detection and disposal of unexploded ordnance, which creates an imminent and substantial endangerment to the public health, welfare, or environment.

``(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department at sites formerly used by or under the jurisdiction of the Secretary.

``(c) RESPONSIBILITY FOR RESPONSE ACTIONS.--

``(1) BASIC RESPONSIBILITY.--The Secretary shall carry out (in accordance with the provisions of this title) all response actions with respect to releases of hazardous substances from each of the following:

``(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the administrative jurisdiction of the Secretary.

``(B) Each facility or site which was under the administrative jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

``(C) Each vessel of the Department of Defense, including vessels owned or bareboat chartered and operated.

``(2) OTHER RESPONSIBLE PARTIES.--Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122.

``(3) STATE FEES AND CHARGES.--The Secretary shall pay all fees and charges imposed by State authorities for permit services for the storage or disposal (or both) of hazardous substances on lands which are under the

administrative jurisdiction of the Secretary to the same extent that nongovernmental entities are subject to fees and charges imposed by State authorities for permit services. This requirement shall not apply where such payment is the responsibility of a lessee, contractor, or other private person.

``(d) SERVICES OF OTHER AGENCIES.--The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of his responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's administrative jurisdiction.

``(e) FUNCTIONS AT SITES FORMERLY USED BY DEPARTMENT OF DEFENSE.--The Secretary, as part of the Defense Environmental Restoration Program, may provide for the removal of unsafe [or unsightly] buildings or debris of the Department of Defense at sites formerly used by the Department.

``SEC. 152. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.

``(a) PROGRAM.--As part of the Defense Environmental Restoration Program, the Secretary shall carry out a program

of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator. The program shall include research, development, and demonstration with respect to each of the following:

``(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

``(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

``(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

``(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

``(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances.

``(b) SPECIAL PERMIT UNDER SECTION 3005(g) OF RCRA.--The

Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act to issue a permit for any testing and evaluation center which receives support under this section.

``(c) CONTRACTS AND GRANTS.--The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

``(d) INFORMATION COLLECTION AND DISSEMINATION.--

``(1) IN GENERAL.--The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

``(2) ROLE OF EPA.--The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator.

``SEC. 153. ENVIRONMENTAL RESTORATION TRANSFER ACCOUNT.

``(a) ESTABLISHMENT OF TRANSFER ACCOUNT.--

``(1) ESTABLISHMENT.--There is hereby established in the Department of Defense [an account][a fund] to be known as the `Defense Environmental Restoration Account'

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(hereinafter in this section referred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary relating to environmental restoration under this or any other Act shall be appropriated to the transfer account.

''(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.--No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

''(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.--Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

''(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.--Amounts in the transfer account shall be available to be transferred by the Secretary to any other appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged and available for the same purposes and for the same period as the account or fund to which transferred.

''(c) OBLIGATION OF TRANSFERRED AMOUNTS.--Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this Act or environmental restoration functions under any other

Act.

``(d) BUDGET REPORTS.--In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this or any other Act.

``(e) AMOUNTS RECOVERED UNDER SUBTITLE A.--Amounts recovered under section 107 for response actions of the Secretary shall be credited to the transfer account.

``**SEC. 154. WIDELY USED HAZARDOUS SUBSTANCES.**

``(a) NOTICE TO ATSDR.--The Secretary shall notify the Administrator of the Agency of Toxic Substances and Disease Registry established under section 104(i) of the 25 hazardous substances which the Secretary determines to be the most widely used hazardous substances at facilities under his jurisdiction--

``(1) for which no standard is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

``(2) for which no water quality criteria are in effect under any provision of the Clean Water Act.

``(b) TOXICOLOGICAL PROFILES.--The Administrator of the Agency for Toxic Substances and Disease Registry shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the 25 substances referred

to in subsection (a). The Secretary shall transfer to such Agency such toxicological data and such sums as may be necessary for the Agency to prepare the profiles of such 25 substances. Such profiles shall include each of the following:

``(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

``(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

``(c) HEALTH ADVISORIES.--

``(1) PREPARATION.--At the request of the Secretary, the Administrator shall in a timely manner prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance--

``(A) for which no advisory exists;

``(B) which is found to threaten drinking water; and

``(C) which is emanating from facilities under

the administrative jurisdiction of the Secretary.

``(2) CONTENT OF HEALTH ADVISORIES.--Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on 1-day, 10-day, and longer-term exposure periods where available toxicological data exist.

``(3) TRANSFER OF NECESSARY DATA.--The Secretary shall transfer to the Administrator such toxicological data as are available and may be necessary to prepare such health advisories.

``SEC. 155. NOTICE OF ENVIRONMENTAL RESTORATION ACTIVITIES.

``(a) EXPEDITED NOTICE.--The Secretary shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's administrative jurisdiction is located receive prompt notice of each of the following:

``(1) The discovery of releases or threatened releases of hazardous substances at installations.

``(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

``(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

``(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

``(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.--

``(1) RELEASE NOTICES.--The Secretary shall ensure that the Administrator and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

``(2) PROPOSALS FOR RESPONSE ACTIONS.--The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence shall not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

``(c) TECHNICAL REVIEW COMMITTEE.--Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or

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threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

``SEC. 156. COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT.

``Removal or remedial actions selected or taken pursuant to this subtitle or secured under section 106 constitute fulfillment of the requirements of section 102 of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852).

``SEC. 157. ANNUAL REPORT TO CONGRESS.

``(a) REPORT ON PROGRESS IN IMPLEMENTATION.--The Secretary shall furnish an annual report to the Congress for each fiscal year which commences after the date of the enactment of this Act. The report shall describe the progress made by the Secretary during the fiscal year in implementing the requirements of this Act.

``(b) MATTERS TO BE INCLUDED.--The report under this section shall include the following:

``(1) A statement for each facility under the administrative jurisdiction of the Secretary of the number of individual facilities at such installation at which a hazardous substance has been identified.

``(2) The status of response actions contemplated or undertaken at each such facility.

``(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

``SEC. 158. MILITARY CONSTRUCTION FOR RESPONSE ACTIONS.

``(a) AUTHORITY.--Subject to subsection (b), the Secretary may carry out a military construction project not otherwise authorized by law if necessary to carry out a response action under this Act.

``(b) CONGRESSIONAL NOTICE-AND-WAIT.--

(1) NOTICE TO CONGRESS.--When a decision is made to carry out a military construction project under this section, the Secretary shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include--

``(A) the justification for the project and the current estimate of the cost of the project; and

``(B) the justification for carrying out the project under this section.

``(2) OVERSIGHT PERIOD.--The project may then be carried out only after--

``(A) the end of the 21-day period beginning on the date the notification is received by those committees; or

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''(B) each such committee approves the project, if the committees approve the project before the end of that period.

''SEC. 159. DEFINITIONS.

''As used in this subtitle:

''(1) SECRETARY.--The term 'Secretary' means the Secretary of Defense.

''(2) ADMINISTRATIVE JURISDICTION OF THE SECRETARY.--The term 'administrative jurisdiction of the Secretary' includes the administrative jurisdiction of the Secretary of Defense and the Secretaries of the military departments.''.

AMENDMENTS TO H.R. 2817, AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

Page 94, line 12, insert "known to be" after "was".

Page 94, line 14, insert "to the best of his knowledge" after "shall".

Page 95, line 10, insert "providing the information available on" after "notice".

Page 95, line 11, strike out "notice of the" and insert in lieu thereof "the approximate".

Page 179, after line 18, insert the following new subsection:

(b) NATIONAL SECURITY.--For any facility subject to this title, the President may waive any provision of this title if he determines that such waiver is required in the interest of national security.

National Governors' Association Draft Amendment

PROVISIONS OF DRAFT AMENDMENT TO H.R. 2817 PROVIDING
FOR COURT RESOLUTION OF DISPUTES BETWEEN EPA AND THE STATES
WITH RESPECT TO REMEDIAL ACTIONS SELECTED AT FEDERAL FACILITIES

Subsection (k) Onsite Cleanup of Federal Facilities.--

(1) Federal and State Permits.--

* Exempts any response action taken at a federal facility from all permit requirements under subtitle C of the Solid Waste Disposal Act. Such permits are costly and time consuming, and according to authorities are expected to take anywhere from two to three years to obtain. Eliminating the permit requirement will accelerate the cleanup process and reduce costs.

* Federal agencies would be required to comply with all other federal, state and local permits such as clean air and clean water permits. Compliance with such permits is seen as essential to insure that all response actions meet all clean air and clean water standards. Without the permitting requirements, the states would have a limited recourse in the event that state air and water standards were not met in carrying out a response action.

* States would be permitted to impose any requirement, including a fee, with respect to the operation and maintenance activities required after any response action is completed.

* Response actions at federal facilities would be subject to all federal, state and local requirements governing the transfer of a hazardous substance from one facility to another.

(2) Selection of Response Action.--

* If a state has formally adopted a more stringent cleanup standard for a particular pollutant or contaminant, it shall be presumed to be in effect unless the Administrator of EPA makes one of two findings:

1) That an alternative will provide the public health and environment with an equivalent degree of protection, or

2) That the state is enforcing its standard in a non-uniform manner, i.e., it is enforcing the standard at Federal Superfund sites and not at State Superfund sites or it is enforcing the standard at federal sites and not at other sites.

* If the Administrator requires the response action to conform to the more stringent state standard, the state would be required to be a party to the cooperative agreement between EPA and the affected agency. In such cases, the agency and the state would split the costs of the cleanup in the traditional manner -- 90 percent by the federal government, 10 percent by the state.

* If the Administrator rejects the state standards by making one of the above two findings, the state would have two options:

1) The state could pay all additional costs associated with meeting the higher state standard, or

2) The state could bring an action against the Administrator of EPA in the appropriate U.S. district court. The court shall require compliance with the state standard if the court determines that the EPA finding was arbitrary and capricious.

* The losing party shall be liable for all reasonable court and witness fees.

* If a state contests a decision by the Administrator of EPA, all applicable deadlines under section 120 shall be suspended.

ENVIRONMENTAL PROTECTION AGENCY DRAFT AMENDMENT

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[ROUGH DISCUSSION DRAFT]

AMENDMENT TO H.R. 2817 AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

Page 103, line 7, strike out ``Nothing'' and all that follows down through line 11.

Page 106, line 13, strike out the period and closing quotation marks.

Page 106, after line 13, insert:

``(k) ONSITE CLEANUP OF FEDERAL FACILITIES.--

``(1) FEDERAL AND STATE PERMITS.--No permit shall be required under subtitle C of the Solid Waste Disposal Act for any response action undertaken at any facility owned or operated by a department, agency, or instrumentality of the United States to the extent that such action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility. Nothing in the preceding sentence shall affect the authority of any State to impose, after remedial action is completed, any requirement (including a fee) with respect to any operation and maintenance activities

required with respect to a hazardous substance or pollutant or contaminant. Nothing in this subsection shall affect any requirement of Federal State or local law to the extent that such requirement applies to response action involving the transfer of a hazardous substance from the facilty at which the release or threatened release occurs to another facility.

"(2) SELECTION OF RESPONSE ACTION.--In selecting response action to be undertaken under this Act at a facility owned or operated by a department, agency or instrumentality of the United States, if a generally applicable State standard is in effect under State law or regulation with respect to any hazardous substance or pollutant or contaminant and if such State standard is more stringent than the standard the Administrator would otherwise apply, the Administrator shall require that the response action conform to the more stringent State standard unless he makes a finding under paragraph (3). If the Administrator requires the response action to conform to a more stringent State standard, the response action shall proceed only after an interagency agreement has been made final under section 120(e). Such agreement shall contain a detailed description of the response action to be taken. The State shall be a party to such agreement and the agreement shall provide that the State

may bring an action to enforce the terms and conditions of the agreement.

``(3) REJECTION OF STATE STANDARDS.--The Administrator may select a respose action to be undertaken under this Act at a facility owned or operated by a department, agency, or instrumentality of the United States, which does not conform to a more stringent State standard referred to in paragraph (2) if he makes either of the following findings:

``(A) An alternative will provide equivalent protection of public health and the environment.

``(B) The application of the State standard to the facility concerned would be unfair in relation to the standard applied to other response actions taken in that State.

``(4) STATE DISAGREEMENT.--If a State disagrees with a finding of the Administrator under paragraph (3), the State may take either or both of the following actions:

``(A) The State may enter into an agreement with the Administrator to pay the additional costs attributable to compliance with the more stringent State standard. The Administrator shall determine the amount of any additional costs attributable to compliance with the more stringent State standard. The response action selected by the Administrator

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shall conform to the more strigent State standard whenever the State has entered into such an agreement.

``(B) The State may bring an action against the Administrator in the appropriate United States district court to set aside the finding made by the Administrator under pragraph (3). The court shall set aside any such finding and require that the response action conform to the State standard if the court determines that the finding was arbitrary and capricious.

Whenever a finding by the Administrator is set aside under subparagraph (B), the Administrator shall be liable for the costs incurred by the State in such action, including reasonable attorney and witness fees. Whenever the court upholds a finding by the Administrator under subparagraph (B), the State which brought the action under subparagraph (B) shall be liable for the costs incurred by the Administrator in such action, including reasonable attorney and witness fees. If a finding by the Administrator is set aside under subparagraph (B) and if the State has previously incurred costs pursuant to an agreement under subparagraph (A), the State may bring an action under section 107 to recover such costs from the department, agency, or instrumentality which owns or

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operates the facility concerned. Whenever a State brings an action against the Administrator under subparagraph (B) any othewise applicable deadline under section 120 shall be suspended.''.

Page 88, line 13, after the period insert : ``This subsection shall not apply to the selection of response action where a more stringent State standard may be applicable in accordance with section 121(k).''

Page 93, strike out lines 3 through 5.

EXPLANATION OF DRAFT FEDERAL FACILITIES AMENDMENT

SUMMARY

This amendment to H.R. 2817 provides a substitute for the bare requirements at Federal facilities of state concurrence in the remedial action and compliance with all Federal, State, and local laws and permit requirements. The amendment avoids applying the procedural requirements involved with permits to onsite response actions at Federal facilities, but provides a mechanism for States to apply substantive State health and environmental standards and siting requirements to such cleanups. Although permit requirements will not apply to the response actions themselves, a State may impose a requirement, including a fee, with respect to any needed operation and maintenance activities. Nothing in the amendment affects the applicability of State standards and requirements to response actions involving the transportation of a hazardous substance offsite to another facility.

For Federal facilities on the National Priorities List, if the Administrator determines that compliance with a State standard or siting requirement is not consistent with the National Contingency Plan, the State may obtain compliance with the standard by paying the additional costs attributable to compliance with the standard, or the Congress may appropriate additional funds for the facility cleanup to meet the standard.

For Federal facilities not on the National Priorities List, if the relevant Federal agency determines, in consultation with the Administrator, that compliance with a State standard or siting requirement is not consistent with the National Contingency Plan, the State may obtain compliance with the standard by paying the additional costs attributable to compliance with the standard.

The State may recover any additional sums paid to achieve compliance with a State standard or siting requirement through a cost recovery action against responsible parties, including the responsible Federal agency, if the State demonstrates that the decision not to comply with the State standard or requirement was arbitrary and capricious.

[DISCUSSION DRAFT 9/25 PM]

AMENDMENT TO H.R. 2817 AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

Page 5, strike out lines 3 through 10 and redesignate the following paragraph accordingly.

Page 88, line 13, after the period insert: "This subsection shall not apply to the selection of response action where a more stringent State standard may be applicable in accordance with section 121(k).".

Page 93, strike out lines 3 through 5.

Page 103, line 7, strike out "Nothing" and all that follows down through line 11.

Page 106, line 13, strike out the period and closing quotation marks.

Page 106, after line 13, insert:

"(k) ONSITE CLEANUP OF FEDERAL FACILITIES.--

"(1) FEDERAL AND STATE PERMITS.--No Federal, State or local permit shall be required for any response action undertaken at any facility owned or operated by a department, agency, or instrumentality of the United States to the extent that such action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility. Nothing in the preceding sentence shall affect the authority of any State to impose, after remedial action is completed, any requirement (including a fee) with respect to

any operation and maintenance activities required with respect to a hazardous substance or pollutant or contaminant. Nothing in this subsection shall affect any requirement of Federal or State law to the extent that such requirement applies to response action involving the transfer of a hazardous substance from the facility at which the release or threatened release occurs to an offsite facility.

"(2) SELECTION OF RESPONSE ACTION AT NATIONAL PRIORITIES LIST SITES.--

"(A) The Administrator, in selecting remedial action to be undertaken under this Act at a facility on the national priorities list that is owned or operated by a department, agency, or instrumentality of the United States, shall require that the response action conform to the promulgated State standard relating to the level or standard for control of the hazardous substance concerned or any State law regarding the siting of a facility, unless the Administrator makes a determination under subparagraph (B). If the Administrator requires the remedial action to conform to the promulgated State standard or siting requirement, the selected remedial action, including the State standard, shall be incorporated into the interagency agreement required under section 120(e) of this Act, and the State shall be made a party to such agreement. The agreement shall provide that the State may bring an action to enforce the terms and conditions of the agreement.

"(B) REJECTION OF STATE STANDARDS.--The Administrator may select a response action to be undertaken under this Act at a facility owned or operated by a department, agency, or instrumentality of the United States that does not conform to a promulgated State standard or siting requirement referred to in subparagraph (A) only if the Administrator determines that --

"(i) compliance with the promulgated State standard or siting requirement is not consistent with the national contingency plan; and

"(ii) the selected remedy protects human health and the environment.

"(C) STATE NOTIFICATION.--Within 30 days after the close of the comment period on the selected remedy, the State shall notify the Administrator that it concurs or does not concur with a decision not to comply with a promulgated State standard or siting requirement. If the State concurs in the decision, the remedial action selected by the Administrator shall proceed through completion. If the State fails to act within 30 days, such failure shall be deemed concurrence for purposes of this paragraph.

"(D) STATE PAYMENT.--If the State notifies the Administrator within 30 days that it does not concur with the Administrator's decision not to comply with a promulgated State standard or siting requirement, and within 90 days after close of the comment period tenders payment of the additional costs attributable to compliance with the State standard or requirement,

the remedial action shall comply with such State standard or requirement and may proceed through completion.

"(E) CONGRESSIONAL ACTION.--(i) If a State notifies the Administrator according to subparagraph (C) that it does not concur with the Administrator's decision not to comply with a promulgated State standard or siting requirement, but fails to tender payment of the additional costs attributable to compliance with such standard or requirement within 90 days after close of the comment period, that portion of the remedial construction that would not be consistent with the promulgated State standard or siting requirement may not take place until the Congress has appropriated funds for the additional costs attributable to compliance with such standard or siting requirement or has determined not to make such appropriation.

"(ii) If the State has failed to tender payment under subparagraph (D), the relevant department, agency, or instrumentality of the United States must provide Congress with a description and estimate of the costs of the remedial action as selected by the Administrator, as well as a description and estimate of the additional costs that would be necessary to comply with the additional promulgated State standard or siting requirement. If Congress appropriates funds for the additional costs attributable to compliance with such standard or requirement, the remedial action shall comply with such standard or requirement and shall proceed through completion. If Congress determines

not to make such an appropriation, the remedial action originally selected by the Administrator shall proceed through completion.

"(F) In an action under section 107 against responsible persons, including the responsible department, agency, or instrumentality of the United States, the State may recover any additional remedial costs incurred by the State under this paragraph, if the State can establish, based on the administrative record, that the Administrator's determination regarding the promulgated State standard or siting requirement was arbitrary and capricious.

"(G) Whenever a State recovers its additional costs under subparagraph (F), the Federal department, agency, or instrumentality shall be liable for the costs incurred by the State in such action, including reasonable attorney and witness fees. Whenever the court upholds a determination by the Administrator under subparagraph (F), the State which brought the action under subparagraph (F) shall be liable for the costs incurred by the Administrator and the Federal department, agency, or instrumentality in such action, including reasonable attorney and witness fees. Whenever a State brings an action against a Federal department, agency, or instrumentality under subparagraph (F), any otherwise applicable deadline under section 120 shall be suspended.

"(3) SELECTION OF RESPONSE ACTION AT NON-NATIONAL PRIORITIES LIST SITES.--

"(A) With respect to remedial action to be undertaken under this Act at a facility not on the national priorities list that is owned or operated by a department, agency, or instrumentality of the United States, such Federal agency shall enter into a memorandum of understanding or other agreement with the Environmental Protection Agency. The memorandum of understanding shall provide for the following --

"(i) a degree and manner of consultation between the two agencies sufficient to ensure that the proposed remedial action meets the requirements of this Act and the national contingency plan and provides necessary protection of human health and the environment;

"(ii) compliance with any applicable promulgated State standards relating to the level or standard for control of the hazardous substances concerned and any State law regarding the siting of facilities, unless the agency, in consultation with the Administrator, determines that compliance is not consistent with the national contingency plan;

"(iii) prompt notice and explanation of the proposed action, including an explanation regarding its decision on compliance with promulgated State standards or siting requirements, to the State in which the facility is located; and

"(iv) an opportunity for appropriate State and local officials to review and comment on the proposed remedial action and to consult with the Federal agency and the Administrator concerning the proposed action.

"(B) STATE NOTIFICATION.--Within 30 days after the close of the comment period on the selected remedy, the State shall notify the Federal agency that it concurs or does not concur with a decision not to comply with a promulgated State standard or siting requirement. If the State concurs in the decision, the remedial action selected by the agency shall proceed through completion. If the State fails to act within 30 days, such failure shall be deemed concurrence for purposes of this paragraph.

"(C) STATE PAYMENT.--If the State notifies the Federal agency within 30 days that it does not concur with the decision not to comply with a promulgated State standard or siting requirement, and within 90 days after close of the comment period tenders payment of the additional costs attributable to compliance with the State standard or requirement, the remedial action shall comply with such State standard or requirement and may proceed through completion. If the State fails to tender timely payment, the remedial action selected by the Federal agency shall proceed through to completion.

"(D) In an action under section 107 against responsible persons, including the responsible department, agency, or

instrumentality of the United States, the State may recover the additional remedial costs incurred by the State under this paragraph, if the State can establish, based on the administrative record, that the Federal agency's determination regarding the promulgated State standard or siting requirement was arbitrary and capricious.

"(E) Whenever a State recovers its additional costs under subparagraph (D), the Federal department, agency, or instrumentality shall be liable for the costs incurred by the State in such action, including reasonable attorney and witness fees. Whenever the court upholds a determination by the agency under subparagraph (D), the State which brought the action under subparagraph (D) shall be liable for the costs incurred by the Administrator and the Federal department, agency, or instrumentality in such action, including reasonable attorney and witness fees. Whenever a State brings an action against a Federal department, agency, or instrumentality under subparagraph (D), any otherwise applicable deadline under section 120 shall be suspended.".

Department of Defense Draft Amendment

NATIONAL SECURITY AMENDMENT

Page _____ Line _____

( ) NATIONAL SECURITY . -- (1) The President may issue such orders regarding response action at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title with respect to the site for facility concerned.

"(2) Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this Act.".

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